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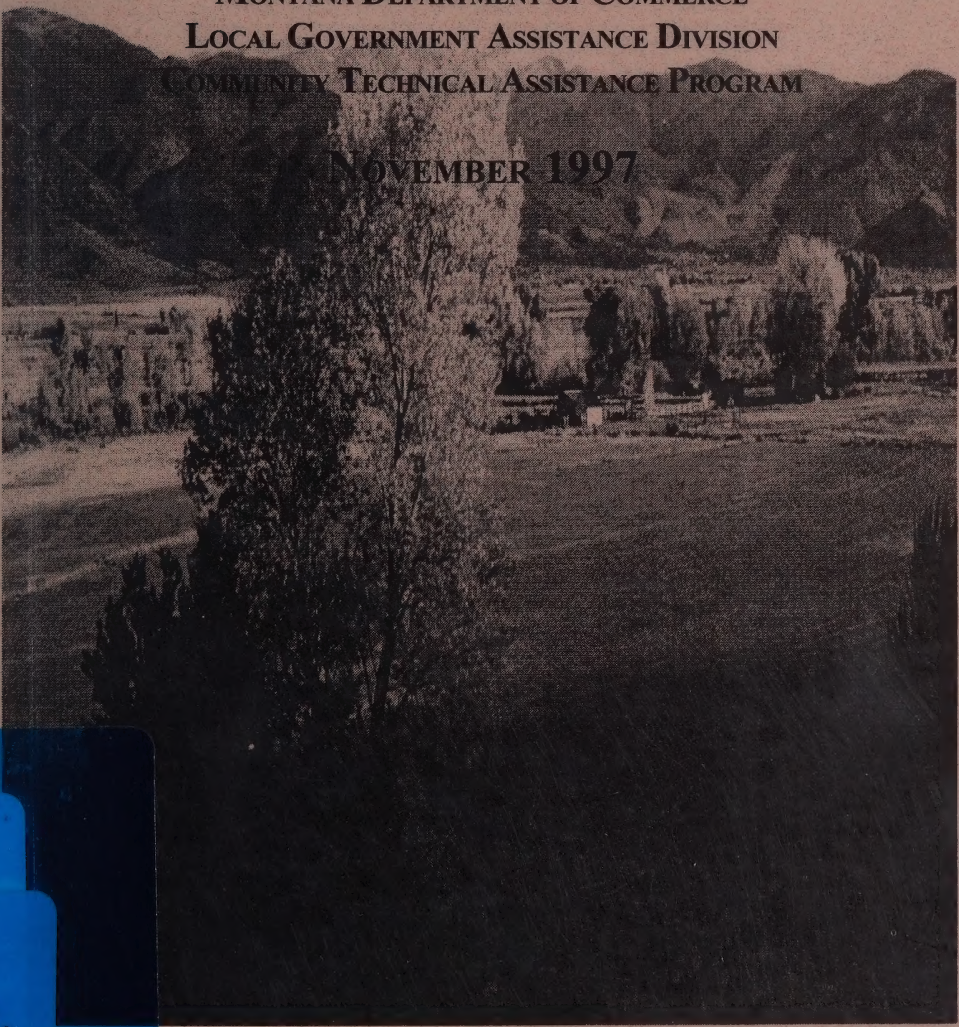
MONTANA'S ANNEXATION AND PLANNING STATUTES

12TH EDITION

MONTANA DEPARTMENT OF COMMERCE
LOCAL GOVERNMENT ASSISTANCE DIVISION
COMMUNITY TECHNICAL ASSISTANCE PROGRAM

NOVEMBER 1997



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MONTANA'S ANNEXATION AND PLANNING STATUTES

12th Edition

Prepared and Published by:

Montana Department of Commerce
Local Government Assistance Division
Community Technical Assistance Program

Helena, Montana

NOVEMBER 1997

The price for this publication is intended only to cover the actual cost to the state to print the publication.

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Preface

Abstract

This publication, **Montana's Annexation and Planning Statutes**, is intended to aid people involved with local community planning in Montana. This publication includes all the changes made by the 1997 Montana Legislature to Montana's annexation and planning laws. This publication is a service of the Community Technical Assistance Program to local governments, community planners, and development and conservation groups.

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MISSOULA, MONTANA 59802

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I. ANNEXATION STATUTES

TITLE 7
CHAPTER 2

CREATION, ALTERATION, AND ABANDONMENT OF LOCAL GOVERNMENTS

Part 42
ADDITION TO MUNICIPALITIES

7-2-4201. Additions to municipalities. Whenever territory adjoining any incorporated city or town is surveyed and laid off into streets or blocks as an addition thereto, said territory may become a part of such city or town:

(1) upon filing the map or plat thereof in the office of the county clerk; and

(2) upon the approval of the mayor and a majority of the council endorsed thereon.

History: En. Sec. 4724, Pol. C. 1895; re-en. Sec. 3212, Rev. C. 1907; re-en. Sec. 4976, R.C.M. 1921; re-en. Sec. 4976, R.C.M. 1935; R.C.M. 1947, 11-401.

7-2-4202. Control of additions. The council has control of all such additions.

History: En. Sec. 4725, Pol. C. 1895; re-en. Sec. 3213, Rev. C. 1907; re-en. Sec. 4977, R.C.M. 1921; re-en. Sec. 4977, R.C.M. 1935; R.C.M. 1947, 11-402(part).

7-2-4203. Imposition of conditions for approval of addition. (1) The council has power by ordinance to compel the owners of these additions to lay out streets, avenues, and alleys, so as to have the same correspond in width and direction and be continuations of the streets, avenues, and alleys in the city or town or in the addition thereto contiguous to or near the proposed addition.

(2) The owner of any addition has no rights or privileges unless the terms and conditions of the ordinance are complied with and the plat thereof has been submitted to and approved by the mayor and council and such approval endorsed thereon.

History: En. Sec. 4725, Pol. C. 1895; re-en. Sec. 3213, Rev. C. 1907; re-en. Sec. 4977, R.C.M. 1921; re-en. Sec. 4977, R.C.M. 1935; R.C.M. 1947, 11-402(part).

7-2-4204. Applicability of part. (1) When the proceedings for annexation of territory to a municipality are instituted as provided in this part, the provisions of this part and no other apply, except where otherwise explicitly indicated.

(2) The governing body of the municipality to which territory is proposed to be annexed may in its discretion select one of the annexation procedures in parts 42 through 47 that is appropriate to the circumstances of the particular annexation. The municipal governing body must then follow the specific procedures prescribed in the appropriate part.

History: En. Sec. 3, Ch. 642, L. 1979; amd. Sec. 1, Ch. 130, L. 1981.

7-2-4205. Provision of services. In all cases of annexation under current Montana law, services must be provided according to a plan provided by the municipality as specified in 7-2-4732, except:

(1) as provided in 7-2-4736; and

(2) in first-class cities when otherwise mutually agreed upon by the municipality and the real property owners of the area to be annexed.

History: En. Sec. 2, Ch. 642, L. 1979; amd. Sec. 1, Ch. 447, L. 1981; amd. Sec. 1, Ch. 66, L. 1995.

7-2-4206 through 7-2-4209 reserved.

7-2-4210. When land conclusively presumed to be annexed. A tract or parcel of land that has been shown on municipal maps or plats as being within municipal boundaries but is later found to have been improperly or unofficially annexed is conclusively presumed to be annexed and may be so recorded if municipal taxes have been paid on the tract or parcel without protest for a period of 7 years.

History: En. Sec. 1, Ch. 109, L. 1981.

Part 43
ANNEXATION OF CONTIGUOUS LAND

Part Cross-References

Annexation of contiguous government land, Title 7, ch. 2, part 44.

7-2-4301. What constitutes contiguous lands. Tracts or parcels of land proposed to be annexed to a city or town under the provisions of this part shall be deemed contiguous to such city or town even though such tracts or parcels of land may be separated from such city or town by a street or other roadway, irrigation ditch, drainage ditch, stream, river, or a strip of unplatted land too narrow or too small to be platted.

History: En. Sec. 1, Ch. 95, L. 1945; amd. Sec. 1, Ch. 16, L. 1955; R.C.M. 1947, 11-404.

7-2-4302. Annexation of contiguous municipalities. (1) When a city or town desires to be annexed to a contiguous city or town, the council of each thereof must appoint three commissioners to arrange and report to the municipal authorities, respectively, the terms and conditions on which the annexation can be made.

(2) If the city or town council of the municipal corporation to be annexed approves of the terms thereof, it must by ordinance so declare and thereupon submit the question of annexation to the electors of the respective cities or towns. If a majority of the electors vote in favor of annexation, the council must so declare and a certified copy of the proceedings for annexation and of the ordinances must be filed with the clerk of the county in which the cities or towns so annexed are situated.

(3) When the copy of the proceedings and the ordinances is filed, the annexation is complete and the city or town to which the annexation is made has power, in addition to other powers conferred by this title, to pass all necessary ordinances to carry into effect the terms of the annexation.

(4) Such annexations do not affect or impair any rights, obligations, or liabilities then existing for or against either of such cities or towns.

History: En. Sec. 322, 5th Div. Comp. Stat. 1887; re-en. Sec. 4727, Pol. C. 1895; re-en. Sec. 3215, Rev. C. 1907; re-en. Sec. 4979, R.C.M. 1921; re-en. Sec. 4979, R.C.M. 1935; R.C.M. 1947, 11-405.

7-2-4303. Restrictions on annexation power. Except as provided in 7-2-4314(1)(d), land used for industrial, railroad, or manufacturing purposes may not be included in a city or town under the provisions of 7-2-4311 through 7-2-4314 and 7-2-4325 without the written consent of the owners of the land.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part); amd. Sec. 1, Ch. 485, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 485 at beginning inserted exception clause, after "industrial" inserted "railroad", after "city" inserted "or town", and after "7-2-4314 and" deleted "7-2-4321 through"; and made minor changes in style.

7-2-4304. Applicability of part. (1) When the proceedings for annexation of territory to a municipality are instituted as provided in this part, the provisions of this part and no other apply, except where otherwise explicitly indicated.

(2) The governing body of the municipality to which territory is proposed to be annexed may in its discretion select one of the annexation procedures in parts 42 through 47 that is appropriate to the circumstances of the particular annexation. The municipal governing body must then follow the specific procedures prescribed in the appropriate part.

History: En. Sec. 3, Ch. 642, L. 1979; amd. Sec. 2, Ch. 130, L. 1981.

7-2-4305. Provision of services. In all cases of annexation under current Montana law, services must be provided according to a plan provided by the municipality as specified in 7-2-4732, except:

(1) as provided in 7-2-4736; and

(2) in first-class cities when otherwise mutually agreed upon by the municipality and the real property owners of the area to be annexed.

History: En. Sec. 2, Ch. 642, L. 1979; amd. Sec. 2, Ch. 447, L. 1981; amd. Sec. 2, Ch. 66, L. 1995.

7-2-4306 through 7-2-4310 reserved.

7-2-4311. Annexation of contiguous land by cities or towns. Any tracts or parcels of land that have been or may be platted into lots or blocks, streets, and alleys or platted for parks, the map or plat of which is filed in the office of the county clerk and recorder of the county in which the tracts or parcels of land are situated, or any unplatted land that has been surveyed and for which a certificate of survey has been filed, as provided by law, if the platted or unplatted land is contiguous to any incorporated city or town, may be embraced within the corporate limits of the city or town, and the boundaries of the city or town may be extended to include the platted or unplatted land in the manner provided in 7-2-4312 through 7-2-4314 and 7-2-4325.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part); amd. Sec. 2, Ch. 485, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 485 near middle, after "incorporated city", substituted "or town" for "of the first class", near end, after "boundaries", substituted "of the city or town may be extended" for "of such city of the first class extended", and at end inserted "and 7-2-4325"; and made minor changes

in style.

7-2-4312. Resolution of intent by city or town – notice. When, in the judgment of any city or town council, expressed by a resolution that is passed and adopted, it is in the best interest of the city or town and the inhabitants of any contiguous platted tracts or parcels of land or unplatted land for which a certificate of survey has been filed that the boundaries of the city or town be extended to include the platted tracts or parcels of land or unplatted land within the corporate limits of the city or town, the city or town clerk shall:

(1) immediately notify, in writing, all registered voters in the territory to be embraced; and

(2) cause a notice to be published in the newspaper published nearest the platted tracts or parcels of land or unplatted land for which a certificate of survey has been filed, at least once a week for 2 successive weeks.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part); amd. Sec. 2, Ch. 526, L. 1983; amd. Sec. 3, Ch. 485, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 485 in three places in introduction, after "city", inserted "or town", and near beginning after "judgment", substituted "of any city or town council" for "of any city council of a city of the first class"; in (1), after "writing", substituted "all registered voters" for "addressed to the address to which tax notices are sent, all owners and purchasers under contracts for deed of property"; and made minor changes in style.

7-2-4313. Contents of notice – protest period. The notice under 7-2-4312 must state that:

(1) the resolution has been passed; and

(2) for a period of 20 days after the first publication of the notice, the city or town clerk shall accept written comments approving or disapproving the proposed extensions of the boundaries of the city or town from registered voters residing in the area proposed to be annexed.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part); amd. Sec. 3, Ch. 66, L. 1995; amd. Sec. 4, Ch. 485, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 485 near beginning of introductory clause, after "notice", inserted "under 7-2-4312"; near beginning in (2), after "city",

inserted "or town" and after "boundaries" substituted "of the city or town from registered voters residing in the area" for "of the city of the first class from real property owners of the area"; and made minor changes in style.

7-2-4314. Hearing on question of annexation – vote on question of annexation – resolution of annexation. (1) (a) The city or town clerk shall, at the next regular meeting of the city or town council after the expiration of the 20-day period provided for in 7-2-4313, forward all written communication received by the clerk for the city or town council's consideration.

(b) Except as provided in subsection (1)(d), if the city or town council, after considering all written communication, adopts a resolution approving the annexation, the implementation of the resolution must be approved by the vote of the registered voters residing in the area proposed for annexation. The resolution must state the date on which the proposed annexation is intended to take effect.

(c) Within 45 days of adopting the resolution for annexation, the city or town council shall submit the question of approving the resolution to the registered voters residing in the area proposed for annexation. A notice of election must be mailed to all registered voters residing in the area proposed for annexation.

(d) If the area to be annexed contains less than 300 recorded parcels, the city or town council, after considering all written communication, may adopt a resolution approving the annexation and the boundaries of the city or town must be extended to include the platted tracts or parcels of land or unplatted land for which a certificate of survey has been filed. An area annexed pursuant to this subsection may include land used for railroad purposes. A city or town council may not annex by resolution an area containing less than 300 recorded parcels if the resolution is disapproved in writing by a majority of real property owners of the area proposed to be annexed. If the resolution is disapproved by a majority of the land owners, the city or town council may not on its own initiative propose further resolutions relating to the annexation of the area or any portion of the area, without petition, for a period of 1 year.

(2) Except as provided in subsection (1)(d), further resolutions relating to the annexation of the area or any portion of the area may not be considered or acted upon by the council on its own initiative, without petition, for a period of 5 years from the date of disapproval by the voters as provided in subsection (1).

History: En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part); amd. Sec. 4, Ch. 66, L. 1995; amd. Sec. 5, Ch. 485, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 485 in (1)(a) and (1)(b), after "city", inserted "or town"; at beginning of (1)(a), before "clerk", inserted "city or town" and after "20-day period" inserted "provided for in 7-2-4313"; at beginning of first sentence in (1)(b) substituted exception clause for former clause that read: "Except as provided in subsection (2), if after considering any written communication" and after "annexation" substituted language requiring approval of implementation of resolution by voters for "the boundaries of the city must be extended to include the platted tracts or parcels of land or unplatted land for which a certificate of survey has been filed" and in second sentence, after "on which", substituted "the proposed annexation is intended to take effect" for "the annexation takes effect"; inserted (1)(c) requiring submission of annexation resolution to voters within 45 days of adoption and requiring notification of voters by mail; inserted (1)(d) authorizing city or town council to adopt resolution for area containing less than 300 parcels and providing use and time limitations; at beginning of (2) substituted exception clause for "The resolution may not be adopted by the city council if disapproved in writing by a majority of the real property owners of the area proposed to be annexed" and at end substituted "for "a period of 5 years from the date of disapproval by the voters as provided in subsection (1)" for "a period of 1 year from the date of disapproval"; and made minor changes in style.

7-2-4315 through 7-2-4320 reserved.

7-2-4321 through 7-2-4324. Repealed. Sec. 11, Ch. 485, L. 1997.

Compiler's Comments

Histories of Repealed Sections:

7-2-4321. En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part); amd. Sec. 1, Ch. 320, L. 1985.

7-2-4322. En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part).

7-2-4323. En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part); amd. Sec. 5, Ch. 66, L. 1995.

7-2-4324. En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217,

L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part); amd. Sec. 6, Ch. 66, L. 1995.

7-2-4325. Consolidation of proceedings for two or more tracts. Whenever two or more adjacent tracts taken as a whole adjoin a city or town, the tracts may be included in one resolution under this part, although one or more of the tracts taken alone may not be adjacent to the corporate limits as then existing.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(3); amd. Sec. 2, Ch. 320, L. 1985; amd. Sec. 6, Ch. 485, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 485 in middle, after "resolution", substituted "under this part" for "under 7-2-4321 through 7-2-4325"; and made minor changes in style.

7-2-4326 through 7-2-4330 reserved.

7-2-4331. When land conclusively presumed to be annexed. A tract or parcel of land that has been shown on municipal maps or plats as being within municipal boundaries but is later found to have been improperly or unofficially annexed is conclusively presumed to be annexed and may be so recorded if municipal taxes have been paid on the tract or parcel without protest for a period of 7 years.

History: En. Sec. 1, Ch. 109, L. 1981.

Part 44
ANNEXATION OF CONTIGUOUS GOVERNMENT LAND

7-2-4401. What constitutes contiguous land for purpose of part. The land proposed to be annexed to a municipality under the provisions of this part shall be deemed contiguous to such municipality even though such land may be separated from such municipality by a street or other roadway, a sidewalk, a public way of any kind, an irrigation ditch or drainage ditch, or some other strip too small for the erection of houses.

History: En. Sec. 2, Ch. 189, L. 1957; R.C.M. 1947, 11-512.

7-2-4402. Annexation of contiguous government land. Whenever any land contiguous to a municipality is owned by the United States or by the state of Montana or by any agency, instrumentality, or political subdivision of either or whenever any of the foregoing have a beneficial interest in any land contiguous to a municipality, such land may be incorporated and included in the municipality to which it is contiguous and may be annexed thereto and made a part thereof in the manner provided in this part.

History: En. Sec. 1, Ch. 189, L. 1957; R.C.M. 1947, 11-511(part).

7-2-4403. Request for annexation by government official. The administrative head of the owner of land referred to in 7-2-4402 or the administrative head of the holder of a beneficial interest in such land shall file with the clerk of the municipality a description of the land, a certification of ownership or of beneficial interest therein, and a statement that the owner of or the holder of the beneficial interest in the land desires to have it annexed.

History: En. Sec. 1, Ch. 189, L. 1957; R.C.M. 1947, 11-511(part).

7-2-4404. Resolution of intent to annex. Upon receiving the request provided for in 7-2-4403, the governing body of the municipality shall pass a resolution reciting its intention to annex the land and setting a time and place for a public hearing thereon.

History: En. Sec. 1, Ch. 189, L. 1957; R.C.M. 1947, 11-511(part).

7-2-4405. Notice of resolution – protest period. The clerk of the municipality shall forthwith cause to be published in the newspaper nearest such land, at least once a week for 2 successive weeks, a notice that such resolution has been duly and regularly passed and that for a period of 20 days after the first publication of such notice, such clerk will receive expressions of approval or disapproval, in writing, of the proposed alterations of the boundaries of the municipality. Said notice shall also state the time and place set for the public hearing on the proposed annexation.

History: En. Sec. 1, Ch. 189, L. 1957; R.C.M. 1947, 11-511(2).

7-2-4406. Hearing on question of annexation – resolution of annexation. (1) At the time and place set for the aforesaid public hearing, the governing body of the municipality shall hear all persons and all things relative to the proposed annexation.

(2) If the governing body shall find that it is to the best interests of the municipality and its inhabitants to annex the land, it shall adopt a resolution of annexation of the land. Said resolution shall become

effective 30 days after its passage and approval, and thereafter the boundary of said municipality shall be as set forth in said resolution.

History: En. Sec. 1, Ch. 189, L. 1957; R.C.M. 1947, 11-511(part).

7-2-4407. Filing of resolution and other papers. Within 30 days after the passage and approval of said resolution, a copy thereof, duly certified by the clerk of the municipality, together with a map showing the corporate limits of said municipality as altered and changed, shall be filed in the office of the county clerk and recorder of the county in which said municipality is located.

History: En. Sec. 1, Ch. 189, L. 1957; R.C.M. 1947, 11-511(part).

7-2-4408. Applicability of part. (1) When the proceedings for annexation of territory to a municipality are instituted as provided in this part, the provisions of this part and no other apply, except where otherwise explicitly indicated.

(2) The governing body of the municipality to which territory is proposed to be annexed may in its discretion select one of the annexation procedures in parts 42 through 47 that is appropriate to the circumstances of the particular annexation. The municipal governing body must then follow the specific procedures prescribed in the appropriate part.

History: En. Sec. 3, Ch. 642, L. 1979; amd. Sec. 3, Ch. 130, L. 1981.

7-2-4409. Provision of services. In all cases of annexation under current Montana law, services must be provided as specified in Title 7, chapter 2, part 47, except when mutually agreed upon by the municipality and the real property owners of the area to be annexed.

History: En. Sec. 2, Ch. 642, L. 1979; amd. Sec. 7, Ch. 66, L. 1995.

7-2-4410 through 7-2-4420 reserved.

7-2-4421. When land conclusively presumed to be annexed. A tract or parcel of land that has been shown on municipal maps or plats as being within municipal boundaries but is later found to have been improperly or unofficially annexed is conclusively presumed to be annexed and may be so recorded if municipal taxes have been paid on the tract or parcel without protest for a period of 7 years.

History: En. Sec. 1, Ch. 109, L. 1981.

Part 45
ANNEXATION OF WHOLLY SURROUNDED LAND

7-2-4501. Annexation of wholly surrounded land. A city may include as part of the city any platted or unplatted tract or parcel of land that is wholly surrounded by the city upon passing a resolution of intent, giving notice, and passing a resolution of annexation. Except as provided in 7-2-4502, the provisions of 7-2-4312 through 7-2-4314 apply to these resolutions and the notice requirement.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part); amd. Sec. 17, Ch. 250, L. 1979; amd. Sec. 1, Ch. 200, L. 1983.

7-2-4502. Protest not available. Wholly surrounded land is annexed, if so resolved by the city or town council, whether or not a majority of the real property owners of the area to be annexed object. The question of annexing the wholly surrounded land is not subject to being voted on by the registered voters of the area to be annexed.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part); amd. Sec. 8, Ch. 66, L. 1995; amd. Sec. 7, Ch. 485, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 485 at beginning of first sentence substituted "Wholly surrounded land" for "The land" and after "resolved" inserted "by the city or town council"; and inserted second sentence providing that annexation of wholly surrounded land is not subject to voter approval.

7-2-4503. Restrictions on annexation power. Land shall not be annexed under this part whenever the land is used:

(1) for agricultural, mining, smelting, refining, transportation, or any industrial or manufacturing purpose; or

(2) for the purpose of maintaining or operating a golf or country club, an athletic field or aircraft landing field, a cemetery, or a place for public or private outdoor entertainment or any purpose incident thereto.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part).

7-2-4504. What constitutes contiguous lands. Tracts or parcels of land proposed to be annexed to a city or town under the provisions of this part shall be deemed contiguous to such city or town even though such tracts or parcels of land may be separated from such city or town by a street or other roadway, irrigation ditch, drainage ditch, stream, river, or a strip of unplatted land too narrow or too small to be platted.

History: En. Sec. 1, Ch. 95, L. 1945; amd. Sec. 1, Ch. 16, L. 1955; R.C.M. 1947, 11-404.

7-2-4505. Applicability of part. (1) When the proceedings for annexation of territory to a municipality are instituted as provided in this part, the provisions of this part and no other apply, except where otherwise explicitly indicated.

(2) The governing body of the municipality to which territory is proposed to be annexed may in its discretion select one of the annexation procedures in parts 42 through 47 that is appropriate to the circumstances of the particular annexation. The municipal governing body must then follow the specific procedures prescribed in the appropriate part.

History: En. Sec. 3, Ch. 642, L. 1979; amd. Sec. 4, Ch. 130, L. 1981.

7-2-4506. Provision of services. In all cases of annexation under current Montana law, services must be provided according to a plan provided by the municipality as specified in 7-2-4732, except:

(1) as provided in 7-2-4736; and

(2) in first-class cities, when otherwise mutually agreed upon by the municipality and the real property owners of the area to be annexed.

History: En. Sec. 2, Ch. 642, L. 1979; amd. Sec. 3, Ch. 447, L. 1981; amd. Sec. 9, Ch. 66, L. 1995.

7-2-4507 through 7-2-4510 reserved.

7-2-4511. When land conclusively presumed to be annexed. A tract or parcel of land that has been shown on municipal maps or plats as being within municipal boundaries but is later found to have been improperly or unofficially annexed is conclusively presumed to be annexed and may be so recorded if municipal taxes have been paid on the tract or parcel without protest for a period of 7 years.

History: En. Sec. 1, Ch. 109, L. 1981.

Part 46
ANNEXATION BY PETITION

7-2-4601. Annexation by petition. (1) The boundaries of any incorporated city or town may be altered and new areas annexed as provided in this part.

(2) The council or other legislative body of a municipal corporation, upon receiving a written petition for annexation containing a description of the area to be annexed and signed by not less than 33 1/3% of the registered electors of the area proposed to be annexed, shall without delay submit to the electors of the municipal corporation and to the registered electors residing in the area proposed by the petition to be annexed the question of whether the area should be made a part of the municipal corporation.

(3) (a) The governing body of a municipality need not submit the question of annexation to the qualified electors as provided in subsection (2) if it has received a written petition containing a description of the area requested to be annexed and signed by:

(i) more than 50% of the resident electors owning real property in the area to be annexed; or

(ii) the owner or owners of 50% of the real property in the area to be annexed.

(b) The governing body may approve or disapprove a petition submitted under the provisions of subsection (3)(a) upon its merits. When the governing body approves the petition, it shall pass a resolution providing for the annexation.

History: En. Sec. 1, Ch. 168, L. 1945; R.C.M. 1947, 11-506(1); amd. Sec. 293, Ch. 571, L. 1979; (3)En. Sec. 1, Ch. 641, L. 1979; amd. Sec. 1, Ch. 279, L. 1985; amd. Sec. 10, Ch. 66, L. 1995.

Cross-References

Petition requirements generally, 7-1-4130.

7-2-4602. Election on question of annexation by petition. (1) The question of annexation may be submitted at the next general municipal election to be held in the municipal corporation or it may be submitted prior to the general election, either at a special election called for that purpose or at any other municipal election, except an election at which the submission of such question is prohibited by law.

(2) The election shall be conducted and the returns made in the same manner as other city or town elections. All election laws governing city and town elections shall govern, insofar as they are applicable.

(3) Whenever the question of annexation under this title is submitted at either a general city or town election or at a special election,

separate ballots, shall be provided therefor.

History: En. Secs. 1, 2, Ch. 168, L. 1945; R.C.M. 1947, 11-506(part), 11-507(part); amd. Sec. 294, Ch. 571, L. 1979.

Cross-References

Elections generally, Title 13.
General elections, 13-1-104.

7-2-4603. Notice of election. (1) The council or legislative body shall publish notice of the election as provided in 13-1-108.

(2) Such notice shall distinctly state the proposition to be submitted, i.e., that it is proposed to annex to, incorporate in, and make a part of such municipal corporation the territory or territories sought to be annexed, specifically describing the boundaries thereof.

(3) The notice of election shall designate the date of the election.

History: En. Sec. 1, Ch. 168, L. 1945; R.C.M. 1947, 11-506(part); amd. Sec. 295, Ch. 571, L. 1979.

7-2-4604. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 2, Ch. 168, L. 1945; R.C.M. 1947, 11-507(part).

7-2-4605. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 2, Ch. 168, L. 1945; R.C.M. 1947, 11-507(part).

7-2-4606. Resolution of annexation. (1) (a) If it is found that a majority of votes were cast in favor of the annexation, the city or town council or other legislative body shall, at a regular or special meeting held within 30 days of the election, pass and adopt a resolution providing for the annexation.

(b) The resolution must state that a petition has been filed with the council or other legislative body with the signatures of 33 1/3% of the resident electors owning real property in the area proposed to be annexed; a description of the boundaries of the area to be annexed; a copy of the resolution ordering a general or special election; a copy of the notice of the election; the time and result of the canvass of the votes received in favor of annexation and the number of votes cast against annexation; and that the boundaries of the city or town will be extended to include the area described in the petition for annexation. The resolution must be incorporated in the minutes of the council or legislative body.

(2) A resolution adopted pursuant to 7-2-4601(3) must include a statement that a petition has been filed with the governing body containing the signatures of more than 50% of the resident electors owning real property or the owners of 50% of the area to be annexed; a description of the boundaries of the area to be annexed; and a statement

that the boundaries of the municipality are to be extended to include the area described in the petition for annexation. The resolution must be incorporated in the minutes of the governing body. Upon incorporation in the minutes, the resolution must be filed and becomes effective as provided in 7-2-4607.

History: (1)En. Sec. 2, Ch. 168, L. 1945; R.C.M. 1947, 11-507(3); (2)En. Sec. 1, Ch. 641, L. 1979; amd. Sec. 2, Ch. 279, L. 1985; amd. Sec. 11, Ch. 66, L. 1995.

7-2-4607. Filing of resolution. (1) The clerk or other officer performing the duties of clerk of such council or legislative body shall promptly make and certify under the seal of said municipal corporation a copy of said record so entered upon said minutes, which document shall be filed with the clerk of the county in which the city or town to which said territory or territories are sought to be annexed is situated.

(2) From and after the date of the filing of said document in the office of the county clerk, the annexation of such territory or territories so proposed to be annexed shall be deemed and shall be complete. Thenceforth such annexed territory or territories shall be, to all intents and purposes, a part of said municipal corporation, and the said city or town to which the annexation is made has the power to pass all necessary ordinances pertaining thereto.

History: En. Sec. 2, Ch. 168, L. 1945; R.C.M. 1947, 11-507(4).

7-2-4608. Restrictions on annexation power. (1) No territory which, at the time such petition for such proposed annexation is presented to such council or legislative body, forms any part of any incorporated city or town shall be annexed under the provisions of this part.

(2) No parcel of land which, at the time such petition for such proposed annexation is presented to such council or legislative body, is used in whole or in part for agricultural, mining, smelting, refining, transportation, or any industrial or manufacturing purpose or any purpose incident thereto shall be annexed under the provisions of this part.

History: En. Secs. 3, 4, Ch. 168, L. 1945; R.C.M. 1947, 11-508, 11-509.

7-2-4609. Applicability of part. (1) This part does not repeal parts 43 and 45 having reference to extension of the corporate limits of cities of the first, second, and third classes to include contiguous land but provides an alternative method that the municipal governing body may in its discretion choose to use for the annexation of territory or territories to municipal corporations.

(2) When any proceedings for annexation of territory or territories

to any municipal corporation are commenced under this part, the provisions of this part and no other apply to such proceedings.

(3) When the proceedings for annexation of territory to a municipality are instituted as provided in this part, the provisions of this part and no other apply, except where otherwise explicitly indicated.

History: En. Sec. 5, Ch. 168, L. 1945; R.C.M. 1947, 11-510; amd. Sec. 18, Ch. 250, L. 1979; amd. Sec. 2, Ch. 641, L. 1979; (3)En. Sec. 3, Ch. 642, L. 1979; amd. Sec. 5, Ch. 130, L. 1981.

7-2-4610. Provision of services. In all cases of annexation under current Montana law, services must be provided according to a plan provided by the municipality as specified in 7-2-4732, except:

(1) as provided in 7-2-4736; and

(2) in first-class cities, when otherwise mutually agreed upon by the municipality and the real property owners of the area to be annexed.

History: En. Sec. 2, Ch. 642, L. 1979; amd. Sec. 4, Ch. 447, L. 1981; amd. Sec. 12, Ch. 66, L. 1995.

7-2-4611 through 7-2-4620 reserved.

7-2-4621. When land conclusively presumed to be annexed. A tract or parcel of land that has been shown on municipal maps or plats as being within municipal boundaries but is later found to have been improperly or unofficially annexed is conclusively presumed to be annexed and may be so recorded if municipal taxes have been paid on the tract or parcel without protest for a period of 7 years.

History: En. Sec. 1, Ch. 109, L. 1981.

Part 47
ANNEXATION WITH THE PROVISION OF SERVICES

7-2-4701. Short title. This part shall be entitled "The Planned Community Development Act of 1973".

History: En. 11-514 by Sec. 1, Ch. 364, L. 1974; R.C.M. 1947, 11-514.

7-2-4702. Findings. (1) It is declared as a matter of state policy that current annexation laws and planning methods incorporated in the Montana system are in many cases discriminatory and are in many of the Montana cities causing indiscriminate growth patterns and in many cases forcing citizens of municipalities to be annexed without provision for adequate city services extended and provided for them.

(2) Likewise, in many cities city government is annexing and adding to cities not to the benefit of those being annexed, but to the

benefit of the city, merely to derive a greater tax base.

(3) Likewise, in many cities there are those lying on the perimeter of the city not within the corporate boundaries of a city that are deriving many benefits from the city without paying their just and equal share for these services.

History: En. 11-515 by Sec. 2, Ch. 364, L. 1974; R.C.M. 1947, 11-515(part).

7-2-4703. Purpose. It is the purpose of this part to develop a just and equitable system of adding to and increasing city boundaries for the state of Montana, which will develop the following firm policies:

(1) Sound urban development is essential to the continued economic development of this state, and any annexation prepared must be well planned in advance.

(2) Municipalities are created to provide the governmental services essential for sound urban development and for the protection of health, safety, and welfare in areas being intensively used for residential, commercial, industrial, institutional, and governmental purposes or in areas undergoing such development, and future annexations must consider these principles.

(3) Municipal boundaries should be extended in accordance with legislative standards applicable throughout the state to include such areas and to provide the high quality of governmental services needed for the public health, safety, and welfare.

(4) Areas annexed to municipalities in accordance with such uniform legislative standards should receive the services provided by the annexing municipality as soon as possible following annexation.

History: En. 11-515 by Sec. 2, Ch. 364, L. 1974; R.C.M. 1947, 11-515(part).

7-2-4704. Definitions. The following terms when used in this part have the following meanings except when the context clearly indicates a different meaning:

(1) "Contiguous" means any area that, at the time annexation procedures are initiated, either abuts directly on the municipal boundary or is separated from the municipal boundary by a street or street right-of-way, a creek or river, the right-of-way of a railroad or other public service corporation, lands owned by the city or some other political subdivision, or lands owned by the state.

(2) "Municipality" means any incorporated city or town.

(3) "Real property owner" means a person who holds an estate of life or inheritance in real property or who is the purchaser of an estate of life or inheritance in real property under a contract for deed, some memorandum of which has been filed in the office of the county clerk.

History: En. 11-516 by Sec. 3, Ch. 364, L. 1974; R.C.M. 1947, 11-516; amd.

Sec. 13, Ch. 66, L. 1995.

7-2-4705. Annexation by municipalities providing services. (1) The governing body of any municipality may extend the corporate limits of the municipality under the procedure set forth in this part upon the initiation of the procedure by the governing body itself.

(2) Whenever the owners of real property situated outside the corporate boundaries of any municipality, but contiguous to the municipality, desire to have real estate annexed to the municipality, they shall file with the governing body of the municipality a petition bearing the signatures of 51% of the real property owners of the area sought to be annexed and requesting a resolution stating that the municipality intends to consider annexation. Upon passage of the resolution, the governing body shall follow the procedure in 7-2-4707 through 7-2-4713 and 7-2-4731(2).

History: En. 11-517 by Sec. 4, Ch. 364, L. 1974; R.C.M. 1947, 11-517(part); amd. Sec. 19, Ch. 250, L. 1979; amd. Sec. 14, Ch. 66, L. 1995.

7-2-4706. Appeal if municipal governing body fails to act on petition. If the municipal governing body fails to act within 60 days, the petitioners may appeal to the district court under the procedure set down in 7-2-4741 through 7-2-4746.

History: En. 11-517 by Sec. 4, Ch. 364, L. 1974; R.C.M. 1947, 11-517(part).

7-2-4707. Resolution of intention to annex. The governing body of any municipality desiring to annex territory under the provisions of this part shall first pass a resolution stating the intent of the municipality to consider annexation. Such resolution shall describe the boundaries of the area under consideration and fix a date for a public hearing on the question of annexation, the date for such public hearing to be not less than 30 days and not more than 60 days following passage of the resolution.

History: En. 11-520 by Sec. 7, Ch. 364, L. 1974; R.C.M. 1947, 11-520(1).

7-2-4708. Notice of hearing. (1) The notice of public hearing shall:

(a) fix the date, hour, and place of the public hearing;

(b) describe clearly the boundaries of the area under consideration;

(c) state that the report required in 7-2-4731 will be available in the office of the municipal official designated by the governing body at least 14 days prior to the date of the public hearing.

(2) Such notice will be given by publication in a newspaper having general circulation in the municipality once a week for at least 4 successive weeks prior to the date of the hearing. The date of the last

publication shall not be more than 7 days preceding the date of the public hearing. If there is no such newspaper, the municipality shall post the notice in at least five public places within the municipality and at least five public places in the area to be annexed for 30 days prior to the date of public hearing.

History: En. 11-520 by Sec. 7, Ch. 364, L. 1974; R.C.M. 1947, 11-520(2).

7-2-4709. Hearing on question of annexation. (1) At the public hearing, a representative of the municipality as designated by the governing body shall first make an explanation of the report required in 7-2-4731.

(2) Following such explanation, all persons resident or owning property in the territory described in the notice of public hearing and all residents of the municipality shall be given an opportunity to be heard.

History: En. 11-520 by Sec. 7, Ch. 364, L. 1974; R.C.M. 1947, 11-520(4).

7-2-4710. Protest. (1) For a period of 45 days after the public hearing provided for in 7-2-4707 through 7-2-4709, the governing body of the municipality shall accept written comments approving or disapproving the proposed annexation from real property owners of the area proposed to be annexed.

(2) If a majority of the real property owners disapprove of the proposed annexation in writing, further proceedings under this part relating to the area or any part of the area proposed to be annexed may not be considered or acted upon by the governing body on its own initiative, without petition, for a period of 1 year from the date of disapproval.

History: En. 11-520 by Sec. 7, Ch. 364, L. 1974; R.C.M. 1947, 11-520(8); amd. Sec. 1, Ch. 586, L. 1985; amd. Sec. 15, Ch. 66, L. 1995.

Cross-References

Protest, 7-1-4132.

7-2-4711. Ordinance of annexation. The municipal governing body shall take into consideration facts presented at the public hearing and shall have authority to amend the report required by 7-2-4731 and to make changes in the plans for serving the area proposed to be annexed so long as such changes meet the requirements of 7-2-4731 through 7-2-4733. At any regular or special meeting held no sooner than 7 days and no later than 60 days following such public hearing, the governing body shall have authority to adopt an ordinance extending the corporate limits of the municipality to include all or such part of the area described in the notice of public hearing which meets the requirements of 7-2-4734 and 7-2-4735 and which the governing body has concluded should be annexed.

History: En. 11-520 by Sec. 7, Ch. 364, L. 1974; R.C.M. 1947, 11-520(part).

7-2-4712. Contents of ordinance of annexation. (1) The ordinance shall:

(a) contain specific findings showing that the area to be annexed meets the requirements of 7-2-4734 and 7-2-4735;

(b) contain a statement of the intent of the municipality to provide services to the area being annexed as set forth in the report required by 7-2-4731; and

(c) fix the effective date of annexation.

(2) The external boundaries of the area to be annexed shall be described by metes and bounds.

History: En. 11-520 by Sec. 7, Ch. 364, L. 1974; R.C.M. 1947, 11-520(part).

7-2-4713. Effective date of annexation. The effective date of annexation may be fixed for any date within 12 months from the date of passage of the ordinance.

History: En. 11-520 by Sec. 7, Ch. 364, L. 1974; R.C.M. 1947, 11-520(part).

7-2-4714. Filing of annexation order. (1) The clerk or other officer performing the duties of the clerk of the governing body of a municipality shall promptly make and certify under the seal of the municipal corporation a copy of the record so entered upon the minutes, which document shall be filed with the clerk of the county in which the municipality to which the territory or territories are sought to be annexed is situated.

(2) From and after the date of filing the document in the office of the county clerk or the effective date of the ordinance, whichever is later, the annexation of the territory or territories shall be complete. Thenceforth such annexed territory or territories shall be a part of the municipal corporation and the city or town to which the annexation is made has the power to pass all necessary ordinances pertaining thereto.

History: En. 11-521 by Sec. 8, Ch. 364, L. 1974; R.C.M. 1947, 11-521.

7-2-4715. Simultaneous proceedings for several areas. If a municipality is considering the annexation of two or more areas which are all adjacent to the municipal boundary but are not adjacent to one another, it may undertake simultaneous proceedings under authority of this part for the annexation of such areas.

History: En. 11-520 by Sec. 7, Ch. 364, L. 1974; R.C.M. 1947, 11-520(7).

7-2-4716. Effect of annexation. (1) From and after the effective date of the annexation ordinance, the territory and its citizens and property shall be subject to all debts, laws, ordinances, and regulations in force in such municipality and shall be entitled to the same privileges and benefits as other parts of such municipality.

(2) The newly annexed territory shall be subject to municipal taxes levied for the fiscal year following the effective date of annexation. Annexed property which is part of a sanitary district or other special service district which has installed water, sewer, or other utilities or improvements paid for by the residents of said district shall not be subject to that part of the municipal taxes levied for debt service for the first 5 years after the effective date of annexation.

History: En. 11-520 by Sec. 7, Ch. 364, L. 1974; R.C.M. 1947, 11-520(6).

7-2-4717. Certain expenditures authorized. (1) Municipalities initiating annexations under the provisions of this part are authorized to make expenditures for surveys required to describe the property under consideration or for any other purpose necessary to plan for the study or annexation of unincorporated territory adjacent to the municipality.

(2) In addition, following final passage of the annexation ordinance, the annexing municipality shall have authority to proceed with expenditures for construction of streets, utility lines, and other capital facilities in the annexed area.

History: En. 11-524 by Sec. 11, Ch. 364, L. 1974; R.C.M. 1947, 11-524.

7-2-4718. Construction. (1) The method of annexation authorized in this part is independent from other methods of annexation authorized by state law.

(2) The governing body of the municipality to which territory is proposed to be annexed may in its discretion select one of the annexation procedures in parts 42 through 47 that is appropriate to the circumstances of the particular annexation. The municipal governing body must then follow the specific procedures prescribed in the appropriate part.

History: En. 11-525 by Sec. 12, Ch. 364, L. 1974; R.C.M. 1947, 11-525(part); amd. Sec. 1, Ch. 642, L. 1979; amd. Sec. 6, Ch. 130, L. 1981.

7-2-4719 through 7-2-4730 reserved.

7-2-4731. Plans and report on extension of services required. (1) A municipality exercising authority under this part shall make plans for the extension of services to the area proposed to be annexed and shall, prior to the public hearing provided for in 7-2-4707 through 7-2-4709, prepare a report setting forth its plans to provide services to such area. This report shall include:

(a) a map or maps of the municipality and adjacent territory to show the following information:

(i) the present and proposed boundaries of the municipality;

(ii) the present streets, major trunk water mains, sewer interceptors and outfalls, and other utility lines and the proposed extension of such streets and utility lines as required in subsection (1)(c); and

(iii) the general land-use pattern in the areas to be annexed;

(b) a statement showing that the area to be annexed meets the requirements of 7-2-4734 and 7-2-4735;

(c) a statement setting forth the plans of the municipality for extending to the area to be annexed each major municipal service performed within the municipality at the time of annexation.

(2) At least 14 days before the date of the public hearing provided for in 7-2-4707 through 7-2-4709, the governing body shall approve the report and shall make it available to the public at the office of the municipal official designated by the governing body. In addition, the municipality may prepare a summary of the full report for public distribution.

History: (1)En. 11-518 by Sec. 5, Ch. 364, L. 1974; Sec. 11-518, R.C.M. 1947; (2)En. 11-520 by Sec. 7, Ch. 364, L. 1974; Sec. 11-520, R.C.M. 1947; R.C.M. 1947, 11-518(part), 11-520(3).

7-2-4732. Contents of plan for extension of services. (1) Specifically, the plans for the extension of services shall provide a long-range plan for extension of services and the acquisition of properties outside the corporate limits. This plan must show anticipated development a minimum of 5 years into the future, showing on a yearly basis how the municipality plans to extend services, develop and add sections to the city.

(2) The plans shall:

(a) provide for extending police protection, fire protection, garbage collection, and streets and street maintenance services to the area to be annexed on substantially the same basis and in the same manner as such services are provided within the rest of the municipality prior to annexation;

(b) provide for future extension of streets and of major trunk water mains, sewer outfall lines, and other utility services into the area to be annexed, so that when such streets and utility lines become necessary and are constructed, property owners in the area to be annexed will be able to secure such services, according to the policies in effect in such municipality for extending such services to individual lots or subdivisions;

(c) if extension of streets and water, sewer, or other utility lines into the area to be annexed is necessary, set forth a proposed timetable for construction of such streets and utility lines.

(3) A method must be set forth by which the municipality plans to finance extension of services into the area to be annexed. If the area is serviced currently by adequate water and sewage services, streets, curbs, and gutters and no capital improvements are needed to provide adequate services stipulated by this section and 7-2-4731, the municipality must provide the area to be annexed with a plan of how they plan to finance other services to be included within the district--mainly, police protection, fire protection, garbage collection, street, and street maintenance services, as well as continued utility service.

(4) In this annexation plan, it must be clearly stated that the entire municipality tends to share the tax burden for these services, and if so, the area may be annexed without a bond issue under the provisions of this part.

History: En. 11-518 by Sec. 5, Ch. 364, L. 1974; R.C.M. 1947, 11-518(part).

7-2-4733. Vote required on proposed capital improvements. Included within the plan must be methodology whereby the area to be annexed may vote upon any proposed capital improvements. Should a negative vote be cast by over 50% of the residents in the section or sections to be annexed in such election, the area may not be annexed.

History: En. 11-518 by Sec. 5, Ch. 364, L. 1974; R.C.M. 1947, 11-518(part); amd. Sec. 20, Ch. 250, L. 1979.

7-2-4734. Standards to be met before annexation can occur. A municipal governing body may extend the municipal corporate limits to include any area which meets the following standards:

(1) It must be contiguous to the municipality's boundaries at the time the annexation proceeding is begun.

(2) No part of the area may be included within the boundary of another incorporated municipality.

(3) It must be included within and the proposed annexation must conform to a comprehensive plan as prescribed in Title 76, chapter 1.

(4) No part of the area may be included within the boundary, as existing at the inception of such attempted annexation, of any fire district organized under any of the provisions of part 21, chapter 33, if the fire district was originally organized at least 10 years prior to the inception of such attempted annexation. However, a single-ownership piece of land may be transferred from a fire district to a municipality by annexation as provided in 7-33-2127.

History: En. 11-519 by Sec. 6, Ch. 364, L. 1974; amd. Sec. 1, Ch. 81, L. 1977; R.C.M. 1947, 11-519(1), (2).

7-2-4735. Guidelines for new boundaries of municipality. In fixing new municipal boundaries, a municipal governing body shall:

(1) wherever practical, use natural topographic features such as ridge lines, streams, and creeks as boundaries; and

(2) if a street is used as a boundary, include within the municipality land on both sides of the street, with such outside boundary not extending more than 200 feet beyond the right-of-way of the street.

History: En. 11-519 by Sec. 6, Ch. 364, L. 1974; amd. Sec. 1, Ch. 81, L. 1977; R.C.M. 1947, 11-519(3).

7-2-4736. Preservation of existing garbage or solid waste service in the event of annexation. (1) A municipality that annexes or incorporates additional area receiving garbage and solid waste disposal service by a motor carrier authorized by the public service commission to conduct such service may not provide competitive or similar garbage and solid waste disposal service to any person or business located in the area for 5 years following annexation except:

(a) upon a proper showing to the public service commission that the existing carrier is unable or refuses to provide adequate service to the annexed or incorporated area; or

(b) after the expiration of 5 years, if a majority of the residents of the annexed or incorporated area sign a petition requesting the municipality to provide the service.

(2) If a proper showing is made that the existing carrier is unable or refuses to provide adequate service to the annexed or incorporated area or, after the expiration of 5 years, if a majority of the residents sign a petition requesting service from the municipality, the municipality may provide garbage and solid waste disposal service to the entire annexed or incorporated area.

(3) For the purposes of determining whether an existing motor carrier provides adequate service, those services provided by the carrier prior to annexation are considered adequate services.

History: En. 11-526 by Sec. 1, Ch. 131, L. 1977; R.C.M. 1947, 11-526; amd. Sec. 1, Ch. 434, L. 1979; amd. Sec. 1, Ch. 381, L. 1987.

Cross-References

Public Service Commission -- certification of garbage or solid waste services, Title 69, ch. 12, part 3.

7-2-4737 through 7-2-4740 reserved.

7-2-4741. Right to court review when area annexed. (1) Within 30 days following the passage of an annexation ordinance under authority of this part, either a majority of the real property owners of the area to be annexed or the owners of more than 75% in assessed valuation of the real estate in the area who believe that they will suffer material injury by reason of the failure of the municipal governing body to comply with the procedures set forth in this part or to meet the requirements set forth in 7-2-4734 and 7-2-4735, as applied to their property, may file a petition in the district court of the district in which the municipality is located seeking review of the action of the governing body.

(2) If two or more petitions for review are submitted to the court, the court may consolidate the petitions for review at a single hearing.

History: En. 11-522 by Sec. 9, Ch. 364, L. 1974; R.C.M. 1947, 11-522(1), (2); amd. Sec. 16, Ch. 66, L. 1995.

Cross-References

Service of civil process, Title 25, ch. 3, part 2.

7-2-4742. Court review and decision when area annexed. (1) The review authorized under 7-2-4741 shall be conducted by the court without a jury. The court may hear oral arguments and receive written briefs and may take evidence intended to show that either:

(a) the statutory procedure was not followed; or

(b) the provisions of 7-2-4731 through 7-2-4735 were not met.

(2) The court may affirm the action of the governing body without change, or it may:

(a) remand the ordinance to the municipal governing body for further proceedings if procedural irregularities are found to have materially prejudiced the substantive rights of any of the petitioners;

(b) remand the ordinance to the municipal governing body for amendment of the boundaries to conform to the provisions of 7-2-4734 and 7-2-4735, but the court cannot remand the ordinance to the municipal governing body with directions to add an area to the municipality which was not included in the notice of public hearing and not provided for in plans for service; or

(c) remand the report to the municipal governing body for amendment of the plans for providing services to the end that the provisions of 7-2-4731 through 7-2-4733 are satisfied.

(3) If any municipality fails to take action in accordance with the court's instructions upon remand within 3 months from receipt of such instructions, the court may in its discretion extend the time for compliance.

History: En. 11-522 by Sec. 9, Ch. 364, L. 1974; R.C.M. 1947, 11-522(3).

7-2-4743. Presumption that municipal actions lawful. All decisions and findings of the governing body of the municipality shall be presumed to be reasonable and lawful until and unless they are modified or set aside by the governing body or upon review.

History: En. 11-522 by Sec. 9, Ch. 364, L. 1974; R.C.M. 1947, 11-522(5).

Cross-References

Presumption that official action regularly performed, 26-1-602.

7-2-4744. Appeal from district court. Any party to the review proceedings, authorized under 7-2-4741 including the municipality, may appeal to the Montana supreme court from the final judgment of the district court under rules of procedure applicable in other civil cases. The appealing party may apply to the lower court for a stay in its final determination or a stay of the annexation ordinance, whichever shall be appropriate, pending the outcome of the appeal to the higher court. The lower court may, with the agreement of the municipality, permit annexation to be effective with respect to any part of the area concerning which no appeal is being made.

History: En. 11-522 by Sec. 9, Ch. 364, L. 1974; R.C.M. 1947, 11-522(part).

7-2-4745. Effect of appeal on effective date of annexation. If part or all of the area annexed under the terms of an annexation ordinance is the subject of an appeal to the lower or higher court on the effective date of the ordinance, then the ordinance shall be deemed amended to make the effective date with respect to such area the date of the final judgment of the lower or higher court, whichever is appropriate, or the date the municipal governing board completes action to make the ordinance conform to the court's instructions in the event of remand.

History: En. 11-522 by Sec. 9, Ch. 364, L. 1974; R.C.M. 1947, 11-522(part).

7-2-4746. Appeal provisions exclusive. No decisions of the governing body shall be subject to collateral attack, and decisions may be reviewed or modified only in the manner provided in 7-2-4741 through 7-2-4744.

History: En. 11-522 by Sec. 9, Ch. 364, L. 1974; R.C.M. 1947, 11-522(6).

7-2-4747 through 7-2-4750 reserved.

7-2-4751. Right to court review when area not annexed. (1) If within 60 days of receiving a valid petition the governing body fails to pass a resolution of intent to annex, the petitioners may file a petition in the district court of the district in which the municipality is located.

(2) The municipality must be designated as the defendant in the

cause and is required to appear and answer as in other cases.

History: En. 11-523 by Sec. 10, Ch. 364, L. 1974; R.C.M. 1947, 11-523(part); amd. Sec. 17, Ch. 66, L. 1995.

7-2-4752. Court review and decision when area not annexed. (1) The court, without a jury, shall hear and determine the questions presented in the petition.

(2) The court shall order the proposed annexation to take place, notwithstanding the provisions of any other law of this state, if the evidence establishes that:

(a) essential municipal services and facilities are not available to the inhabitants of such territory;

(b) the municipality is physically and financially able to provide municipal services to the area sought to be annexed; and

(c) at least one-eighth of the aggregate external boundaries of the territory sought to be annexed is contiguous to the boundaries of the municipality.

(3) If, however, the evidence does not establish all three of the foregoing factors, the court shall deny the petition to annex and dismiss the proceeding.

History: En. 11-523 by Sec. 10, Ch. 364, L. 1974; R.C.M. 1947, 11-523(part).

7-2-4753 through 7-2-4760 reserved.

7-2-4761. When land conclusively presumed to be annexed. A tract or parcel of land that has been shown on municipal maps or plats as being within municipal boundaries but is later found to have been improperly or unofficially annexed is conclusively presumed to be annexed and may be so recorded if municipal taxes have been paid on the tract or parcel without protest for a period of 7 years.

History: En. Sec. 1, Ch. 109, L. 1981.

II. PLANNING STATUTES

TITLE 76
CHAPTER 1

PLANNING BOARDS

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Chapter Cross-References

Planned Community Development Act of 1973, Title 7, ch. 2, part 47.
Montana's greenbelt law, Title 15, ch. 7, part 2.
Planning functions of Department of Commerce, 90-1-102, 90-1-103.

Part 1
GENERAL PROVISIONS

76-1-101. Planning boards authorized. The governing body of any city or town, the governing bodies of more than one city or town, or the governing body of any county or any combination thereof may create a planning board in order to promote the orderly development of its governmental units and its environs.

History: En. Sec. 1, Ch. 246, L. 1957; amd. Sec. 1, Ch. 247, L. 1963; amd. Sec. 2, Ch. 273, L. 1971; R.C.M. 1947, 11-3801(part).

Cross-References

Building regulations -- appointment of zoning commission, Title 76, ch. 2, part 3.

76-1-102. Purpose. (1) It is the object of this chapter to encourage local units of government to improve the present health, safety, convenience, and welfare of their citizens and to plan for the future development of their communities to the end that highway systems be carefully planned; that new community centers grow only with adequate highway, utility, health, educational, and recreational facilities; that the needs of agriculture, industry, and business be recognized in future growth; that residential areas provide healthy surroundings for family life; and that the growth of the community be commensurate with and promotive of the efficient and economical use of public funds.

(2) In accomplishing this objective, it is the intent of this chapter that the planning board shall serve in an advisory capacity to presently established boards and officials.

History: En. Sec. 1, Ch. 246, L. 1957; amd. Sec. 1, Ch. 247, L. 1963; amd. Sec. 2, Ch. 273, L. 1971; R.C.M. 1947, 11-3801(part).

76-1-103. Definitions. As used in this chapter, the following definitions apply:

(1) "City" includes incorporated cities and towns.

(2) "City council" means the chief legislative body of a city or incorporated town.

(3) "Governing body" or "governing bodies" means the governing body of any governmental unit represented on a planning board.

(4) "Master plan" means a comprehensive development plan or any of its parts such as a plan of land use and zoning, of thoroughfares, of sanitation, of recreation, and of other related matters.

(5) "Mayor" means mayor of a city.

(6) "Person" means any individual, firm, or corporation.

(7) "Planning board" means a city planning board, a county planning board or a joint city-county planning board.

(8) "Plat" means a subdivision of land into lots, streets, and areas, marked upon the earth and represented on paper, and includes replats or amended plats.

(9) "Public place" means any tract owned by the state or its subdivisions.

(10) "Streets" includes streets, avenues, boulevards, roads, lanes, alleys, and all public ways.

(11) "Units of government" means any federal, state, or regional unit of government or any county, city, or town.

(12) "Utility" means any facility used in rendering service which the public has a right to demand.

History: En. Sec. 3, Ch. 246, L. 1957; amd. Sec. 2, Ch. 247, L. 1963; amd. Sec. 1, Ch. 349, L. 1973; R.C.M. 1947, 11-3803(part); amd. Sec. 1, Ch. 266, L. 1979.

76-1-104. Procedure to establish county planning board – protest. (1) Before a county planning board may be created, the board of county commissioners shall by resolution give public notice of their intent to create such planning board and of a public hearing thereon by publication of notice of time and place of hearing on such resolution in each newspaper published in the county not less than 15 or more than 30 days prior to the date of hearing.

(2) A resolution creating a county planning board shall not be adopted by the board of county commissioners if disapproved in writing, not later than 60 days after such hearing, by a majority of the qualified electors of the county residing outside the limits of the jurisdictional area of an existing city-county planning board established pursuant to 76-1-504 through 76-1-507 and outside the incorporated limits of each city and town in the county.

History: En. Sec. 1, Ch. 246, L. 1957; amd. Sec. 1, Ch. 247, L. 1963; amd. Sec. 2, Ch. 273, L. 1971; R.C.M. 1947, 11-3801(part).

Cross-References

Publication of legal notices, 7-5-2411; Title 18, ch. 7, part 2.

76-1-105. Role of county in formation of city planning board. (1) Prior to enacting an ordinance creating a city planning board, the city council shall notify in writing the county commissioners of the county in which the city is located of their intention to form a city planning board.

(2) The board of county commissioners shall elect to form a city-county planning board or to permit the city to form a city planning board and shall notify in writing the city council of its election within 30 days

from receipt of notice of the city's intention to form a planning board. In the event the county commissioners so elect, the planning board to be so formed shall be a city-county planning board.

History: En. Sec. 5, Ch. 246, L. 1957; R.C.M. 1947, 11-3805.

76-1-106. Role of the planning board. (1) To assure the promotion of public health, safety, morals, convenience, order, or the general welfare and for the sake of efficiency and economy in the process of community development, the planning board shall prepare a master plan and shall serve in an advisory capacity to the local governing bodies establishing the planning board.

(2) The planning board may also propose policies for:

(a) subdivision plats;

(b) the development of public ways, public places, public structures, and public and private utilities;

(c) the issuance of improvement location permits on platted and unplatted lands;

(d) the laying out and development of public ways and services to platted and unplatted lands.

History: En. Sec. 28, Ch. 246, L. 1957; amd. Sec. 10, Ch. 247, L. 1963; R.C.M. 1947, 11-3828(1), (2).

76-1-107. Role of planning board in relation to subdivisions and plats. The governing body of any city, town, or county which has formed a planning board and adopted a comprehensive plan and subdivision regulations pursuant to this chapter and chapter 3 shall seek the advice of the appropriate planning board in all matters pertaining to the approval or disapproval of plats or subdivisions.

History: En. Sec. 2, Ch. 19, L. 1971; R.C.M. 1947, 11-3842.1.

76-1-108. City-county planning board as a zoning commission. The city council may in its discretion require the city-county planning board to function as the zoning commission authorized under 76-2-307.

History: En. Sec. 28, Ch. 246, L. 1957; amd. Sec. 10, Ch. 247, L. 1963; R.C.M. 1947, 11-3828(3).

76-1-109. Interaction of local government and city-county planning board. The governing bodies of the city or county shall give consideration to recommendations of the city-county planning board, but the governing bodies shall not be bound by such recommendations.

History: En. Sec. 28, Ch. 246, L. 1957; amd. Sec. 10, Ch. 247, L. 1963; R.C.M. 1947, 11-3828(4).

76-1-110. Cooperation with planning board by state and local governments. Whenever the board undertakes the preparation of a master plan, the departments and officials of state, city, county, and separate taxing units operating within lands under the jurisdiction of the board shall make available, upon the request of the board, such information, documents, and plans as have been prepared or, upon the request of the board, shall provide such information as relates to the board's activity.

History: En. Sec. 29, Ch. 246, L. 1957; R.C.M. 1947, 11-3829.

76-1-111. Representation of county or additional cities or towns on existing boards. (1) Any city, county, or town or any combination thereof wishing to be represented upon an existing planning board may, by agreement of the governing body or bodies then represented upon the board, obtain representation thereon and share in the membership duties and costs of the board upon a basis agreeable to the governing body or bodies creating the board.

(2) The membership as well as the jurisdictional area of any board may be increased to provide for representation and planning of any additional cities, counties, or towns seeking representation.

(3) Any city, county, or town which becomes represented upon an existing planning board pursuant to this section may appropriate funds for expenses necessary to cover the costs of such representation. The governing bodies of any city or county so being represented may levy on all property which is added to the jurisdictional area of an existing board by such representation a tax for planning board purposes under procedures set forth in Title 7, chapter 6, part 23 or part 42, whichever is applicable; provided such tax shall not exceed the maximum levy authorized in 76-1-402 through 76-1-407.

History: En. Sec. 15, Ch. 246, L. 1957; amd. Sec. 6, Ch. 273, L. 1971; R.C.M. 1947, 11-3815.

76-1-112. Joint or consolidated planning boards. (1) Any existing city, county, or city-county planning board may form a joint or consolidated planning board with any other existing city, county, or city-county planning board or with any combination of these boards.

(2) The manner of combination must be by interlocal agreement of the cities, counties, and towns represented on the existing planning boards pursuant to Title 7, chapter 11, part 1.

(3) The interlocal agreement must:

(a) state the name of the combined board;

(b) specify whether a joint or combined board is formed;

(c) specify the representation, means and manner of appointment, membership duties, and manner of sharing costs of the combined board which may, subject to subsection (6), be on any basis agreeable to the governing bodies of the cities, counties, and towns represented on the existing planning boards.

(4) If a consolidated board is formed, the existing city, county, and city-county planning boards must be dissolved and the consolidated board has the rights, duties, powers, and obligations of the existing planning boards.

(5) If a joint board is formed, the existing planning boards may not be dissolved and the joint board has the rights, duties, powers, and obligations that are contained in the interlocal agreement.

(6) Membership of any city-county board formed pursuant to this section must have representation consistent with the requirements of part 2 of this chapter.

History: En. 11-3815.1 by Sec. 1, Ch. 101, L. 1975; R.C.M. 1947, 11-3815.1; amd. Sec. 1, Ch. 274, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 274 in (3)(c), near middle after "may", inserted "subject to subsection (6)"; inserted (6) requiring consistent representation on a city-county board; and made minor changes in style. Amendment effective July 1, 1997.

Retroactive Applicability: Section 2, Ch. 274, L. 1997, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all joint or consolidated city-county planning boards created after July 1, 1985, which are still in existence. [This act] does not affect any action taken by a joint or consolidated planning board prior to the effective date of [this act]." Effective July 1, 1997.

76-1-113. Effect of chapter on natural resources. (1) Except as provided in subsection (2), nothing in this chapter may be considered to authorize an ordinance, resolution, or rule that would prevent the complete use, development, or recovery of any mineral, forest, or agricultural resources by the owner thereof.

(2) The complete use, development, or recovery of a mineral by an operation that mines sand and gravel and an operation that mixes concrete or batches asphalt on a site that is located within a geographic area zoned as residential are subject to the zoning regulations adopted under Title 76, chapter 2.

History: En. Sec. 53, Ch. 246, L. 1957; amd. Sec. 6, Ch. 271, L. 1959; R.C.M. 1947, 11-3853; amd. Sec. 1, Ch. 408, L. 1991.

Part 2
MEMBERSHIP

76-1-201. Membership of city-county planning board. (1) Except as provided in subsection (2), a city-county planning board shall consist of not less than nine members to be appointed as follows:

(a) two official members who reside outside the city limits but within the jurisdictional area of the city-county planning board to be appointed by the board of county commissioners, who may in the discretion of the board of county commissioners be employed by or hold public office in the county;

(b) two official members who reside within the city limits to be appointed by the city council, who may in the discretion of the city council be employed by or hold public office in the city;

(c) two citizen members who reside within the city limits to be appointed by the mayor of the city;

(d) two citizen members who reside within the jurisdictional area of the city-county planning board to be appointed by the board of county commissioners;

(e) the ninth member to be selected by the eight officers and citizen members hereinabove provided for from the members of the board of supervisors of a conservation district provided for in 76-15-311.

(2) Subsection (1)(e) does not apply if there is no member of the board of supervisors of a conservation district who is able or willing to serve on the city-county planning board. In such case, the ninth member of the city-county planning board shall be selected by the eight officers and citizen members hereinabove provided for with the consent and approval of the board of county commissioners and the city council.

History: En. Sec. 10, Ch. 246, L. 1957; amd. Sec. 4, Ch. 247, L. 1963; amd. Sec. 1, Ch. 189, L. 1965; amd. Sec. 3, Ch. 273, L. 1971; amd. Sec. 2, Ch. 349, L. 1973; R.C.M. 1947, 11-3810(part); amd. Sec. 1, Ch. 192, L. 1979; amd. Sec. 1, Ch. 509, L. 1985.

76-1-202. Qualifications of citizen members of city-county planning board. (1) The citizen members of the city-county planning board shall be resident freeholders in the area over which the planning board has jurisdiction; provided, however, that at least two of such members shall be resident freeholders in the area, if any, outside the city limits over which the planning board has jurisdiction and the two members appointed by the county commissioners shall reside outside the city limits but within the jurisdictional area of the planning board.

(2) Any citizen appointee may be removed from office by a majority vote of the governing body of the governmental unit represented by such

appointee.

History: **(1)Ap. p. Sec. 12, Ch. 246, L. 1957; amd. Sec. 2, Ch. 271, L. 1959; amd. Sec. 5, Ch. 273, L. 1971; Sec. 11-3812, R.C.M. 1947; Ap. p. Sec. 10, Ch. 246, L. 1957; amd. Sec. 4, Ch. 247, L. 1963; amd. Sec. 1, Ch. 189, L. 1965; amd. Sec. 3, Ch. 273, L. 1971; amd. Sec. 2, Ch. 349, L. 1973; Sec. 11-3810, R.C.M. 1947; (2)En. Sec. 13, Ch. 246, L. 1957; amd. Sec. 5, Ch. 247, L. 1963; Sec. 11-3813, R.C.M. 1947; R.C.M. 1947, 11-3810(part), 11-3812(part), 11-3813.**

76-1-203. Term of members of county and city-county planning boards. The terms of the members who are officers of any governmental unit represented on the board shall be coextensive with their respective terms of office to which they have been elected or appointed; the terms of the other members shall be 2 years, except that the terms of the first members appointed shall be fixed by agreement and rule of the governing bodies represented on the board for 1 or 2 years in order that a minimum number of terms shall expire in any year.

History: En. Sec. 10, Ch. 246, L. 1957; amd. Sec. 4, Ch. 247, L. 1963; amd. Sec. 1, Ch. 189, L. 1965; amd. Sec. 3, Ch. 273, L. 1971; amd. Sec. 2, Ch. 349, L. 1973; R.C.M. 1947, 11-3810(3).

76-1-204. Vacancies on county and city-county planning boards. (1) Vacancies occurring on the board of official members and by death or resignation of citizen members shall be filled for the unexpired term by the governing bodies having appointed them.

(2) Vacancies occurring in citizen members on the county planning board at the end of a term shall be filled by the board of county commissioners.

(3) Vacancies occurring in citizen members on the city-county planning board at the end of a term shall be filled alternately by the mayor and the board of county commissioners represented on the board, commencing with the mayor.

(4) In the event more than one city is represented on a board, the representation and appointments to be made by the respective cities and counties shall be by agreement and rule of the board.

History: En. Sec. 11, Ch. 246, L. 1957; amd. Sec. 4, Ch. 273, L. 1971; R.C.M. 1947, 11-3811.

76-1-205 through 76-1-210 reserved.

76-1-211. Membership of county planning board. (1) County planning boards shall consist of not less than five members appointed by the board of county commissioners. At least one member of any county planning board existing on or formed after July 1, 1973, shall be a member of the governing board of a conservation district as provided for in chapter 15 or a state cooperative grazing district if officers of either reside in said county.

(2) In the event that any city or town subsequently becomes represented on the county planning board pursuant to 76-1-111, additional members of the planning board representing such cities or towns shall be appointed by the respective city councils.

History: En. Sec. 10, Ch. 246, L. 1957; amd. Sec. 4, Ch. 247, L. 1963; amd. Sec. 1, Ch. 189, L. 1965; amd. Sec. 3, Ch. 273, L. 1971; amd. Sec. 2, Ch. 349, L. 1973; R.C.M. 1947, 11-3810(2).

76-1-212. Citizen members of county planning board. (1) The citizen members of the county planning board shall be resident freeholders in the area over which the planning board has jurisdiction.

(2) Any citizen appointee may be removed from office by a majority vote of the governing body of the governmental unit represented by such appointee.

History: (1)En. Sec. 12, Ch. 246, L. 1957; amd. Sec. 2, Ch. 271, L. 1959; amd. Sec. 5, Ch. 273, L. 1971; Sec. 11-3812, R.C.M. 1947; (2)En. Sec. 13, Ch. 246, L. 1957; amd. Sec. 5, Ch. 247, L. 1963; Sec. 11-3813, R.C.M. 1947; R.C.M. 1947, 11-3812(part), 11-3813.

76-1-213 through 76-1-220 reserved.

76-1-221. Membership of city planning board. (1) A city planning board shall consist of not less than seven members to be appointed as follows:

(a) one member to be appointed by the city council from its membership;

(b) one member to be appointed by the city council, who may in the discretion of the city council be an employee or hold public office in the city or county in which the city is located;

(c) one member to be appointed by the mayor upon the designation by the county commissioners of the county in which the city is located;

(d) four citizen members to be appointed by the mayor, two of whom shall be resident freeholders within the urban area, if any, outside of the city limits over which the planning board has jurisdiction under this chapter and two of whom shall be resident freeholders within the city limits.

(2) The clerk of the city council shall certify members appointed by its body. The certificates shall be sent to and become a part of the records of the planning board. The mayor shall make similar certification for the appointment of citizen members.

History: (1)En. Sec. 4, Ch. 246, L. 1957; amd. Sec. 1, Ch. 271, L. 1959; Sec. 11-3804, R.C.M. 1947; (2)En. Sec. 7, Ch. 246, L. 1957; Sec. 11-3807, R.C.M. 1947;

R.C.M. 1947, 11-3804(part), 11-3807.

76-1-222. City council member of city planning board. (1) As soon as the city council has enacted an ordinance creating a city planning board, the city council shall select a member of its body to serve on the planning board. The term of the appointed member shall be coextensive with the term of office to which he has been elected or appointed unless the council, on its first regular meeting of each year, appoints another to serve as its representative or unless his term is terminated as hereinafter provided.

(2) The city council shall fill any vacancy occurring in its respective membership on the planning board.

History: En. Sec. 6, Ch. 246, L. 1957; R.C.M. 1947, 11-3806.

76-1-223. County representative for city planning board. As soon as a city council has enacted an ordinance creating a city planning board, the board of county commissioners of the county wherein the city is located shall within 45 days designate a representative of the county to the mayor of the city for appointment to the city planning board. This representative may be a member of the board of county commissioners or an officeholder or employee of the county. In the event of the failure of the county to so designate such member, the mayor may appoint a person of his own choosing and at his sole discretion as a representative of the county.

History: En. Sec. 14, Ch. 246, L. 1957; R.C.M. 1947, 11-3814; amd. Sec. 2, Ch. 266, L. 1979.

76-1-224. Citizen members of city planning board. (1) The citizen members shall:

(a) be qualified by knowledge and experience in matters pertaining to the development of the city; and

(b) hold no other office in the city government.

(2) Any citizen appointee may be removed from office by a majority vote of the governing body of the city.

History: En. Secs. 8, 13, Ch. 246, L. 1957; amd. Secs. 3, 5, Ch. 247, L. 1963; R.C.M. 1947, 11-3808, 11-3813; amd. Sec. 3, Ch. 266, L. 1979.

Part 3
ORGANIZATION AND ADMINISTRATION

Part Cross-References

Right of public participation, Art. II, sec. 8, Mont. Const.; Title 2, ch. 3, part 1.

Open meeting law, Art. II, sec. 9, Mont. Const.; Title 2, ch. 3, part 2.

Expense allowances for state, 2-18-501 through 2-18-503.

76-1-301. Planning board meetings. (1) The board shall fix the time for holding regular meetings, but it shall meet at least once in the months of January, April, July, and October.

(2) Special meetings of the planning board may be called by the president or by two members upon written request to the secretary. The secretary shall send to all members, at least 2 days in advance of a special meeting, a written notice fixing the time and place of the meeting. Written notice of a special meeting is not required if the time of the special meeting has been fixed in a regular meeting or if all members are present at the special meeting.

History: En. Secs. 16, 17, Ch. 246, L. 1957; R.C.M. 1947, 11-3816, 11-3817.

76-1-302. Planning board officers. At its first regular meeting in each year, the board shall elect from its members a president and vice-president. The vice-president shall have authority to act as president of the board during the absence or disability of the president.

History: En. Sec. 21, Ch. 246, L. 1957; R.C.M. 1947, 11-3821.

76-1-303. Offices. The city or county shall provide suitable offices for the holding of meetings and the preservation of plans, maps, documents, and accounts.

History: En. Sec. 23, Ch. 246, L. 1957; R.C.M. 1947, 11-3823.

76-1-304. Quorum – official action. (1) A majority of members shall constitute a quorum.

(2) No action of the planning board is official, however, unless authorized by a majority of members of the board at a regular or properly called special meeting.

History: En. Sec. 18, Ch. 246, L. 1957; amd. Sec. 6, Ch. 247, L. 1963; R.C.M. 1947, 11-3818.

76-1-305. Administration of board. To effectuate the purpose of this chapter, the board shall have the power and duty to:

(1) exercise general supervision of and make regulations for the administration of the affairs of the board;

(2) prescribe uniform rules pertaining to investigations and hearings;

(3) keep an accurate and complete record of all departmental proceedings, record and file all bonds and contracts, and assume responsibility for the custody and preservation of all papers and documents of the board;

(4) make recommendations and an annual report to any governing bodies represented on the board concerning the operation of the board and the status of planning within its jurisdiction;

(5) prepare, publish, and distribute reports, proposed ordinances and proposed resolutions, and other material relating to the activities authorized under this chapter.

History: En. Sec. 24, Ch. 246, L. 1957; amd. Sec. 8, Ch. 247, L. 1963; R.C.M. 1947, 11-3824(part).

76-1-306. Board secretary and employees – service contracts. (1) The board may appoint and prescribe the duties and fix the compensation of a secretary and such employees as are necessary for the discharge of the duties and responsibilities of the board.

(2) To effectuate the purpose of this chapter, the board shall have the power and duty to prescribe the qualifications of, appoint, remove, and fix the compensation of the employees of the board and delegate to employees authority to perform ministerial acts in all cases except where final action of the board is necessary.

(3) The board may make contracts for special or temporary services and any professional services.

History: (1), (3)En. Sec. 22, Ch. 246, L. 1957; Sec. 11-3822, R.C.M. 1947; (2)En. Sec. 24, Ch. 246, L. 1957; amd. Sec. 8, Ch. 247, L. 1963; Sec. 11-3824, R.C.M. 1947; R.C.M. 1947, 11-3822, 11-3824(part).

76-1-307. Compensation and expenses of board members and employees. (1) The members of planning boards shall receive no salary for serving on the planning board but may be reimbursed from local funds for transportation and actual expenses up to but not exceeding state transportation reimbursements and allowable expenses incurred in attending planning board meetings.

(2) When the planning board determines that it is necessary for members or employees to attend a regional or national conference or interview in another city, county, or state dealing with planning or related problems, the planning board may pay the actual expenses of the attending members or employees provided the amount has been made available in the board's appropriation.

History: (1)En. Sec. 19, Ch. 246, L. 1957; amd. Sec. 1, Ch. 291, L. 1974; Sec. 11-3819, R.C.M. 1947; (2)En. Sec. 20, Ch. 246, L. 1957; amd. Sec. 7, Ch. 247, L. 1963; Sec. 11-3820, R.C.M. 1947; R.C.M. 1947, 11-3819, 11-3820.

Part 4
FINANCIAL ADMINISTRATION

Part Cross-References

County land planning assistance, 90-1-108.

76-1-401. Fiscal administration. (1) To effectuate the purpose of this chapter, the board shall have the power and duty to:

(a) supervise the fiscal affairs and responsibilities of the board;

(b) prepare and submit to the governing bodies represented on the board an annual budget in the same manner as other departments of the city and county governments and shall be limited in all expenditures to the provisions made therefor by the governing bodies represented upon the board.

(2) The planning board shall have authority to expend, under regular city or county procedure as provided by law, all sums appropriated to it for purposes and activities authorized by this chapter.

History: (1)En. Sec. 24, Ch. 246, L. 1957; amd. Sec. 8, Ch. 247, L. 1963; Sec. 11-3824, R.C.M. 1947; (2)En. Sec. 26, Ch. 246, L. 1957; Sec. 11-3826, R.C.M. 1947; R.C.M. 1947, 11-3824(part), 11-3826.

76-1-402. Funding of board operation. (1) After a city council has by ordinance, a board of county commissioners has by ordinance and resolution, or a city council and board of county commissioners have by ordinance and resolution created a planning board, the governing bodies represented upon such board may appropriate funds to carry out the duties of the planning board.

(2) When a planning board has been created by agreement of more than one governmental unit, the governing bodies of the governmental units which have created the board shall agree upon the proportion of expenditures to be borne by each such unit and may budget and appropriate the funds necessary for the respective shares thus agreed upon.

History: En. Sec. 25, Ch. 246, L. 1957; amd. Sec. 9, Ch. 247, L. 1963; amd. Sec. 7, Ch. 273, L. 1971; R.C.M. 1947, 11-3825(1), (2).

76-1-403. Tax levy by county for certain county planning districts authorized. When a county planning board has been established, the board of county commissioners may create a planning district which shall include that property which lies outside the limits of the jurisdictional area as established pursuant to 76-1-504 through 76-1-507 or as modified pursuant to 76-1-501 through 76-1-503 in counties where a city-county planning board has been established as well as that property which lies outside the limits of any incorporated cities and towns. The board of county commissioners may levy on all property located within such planning district a tax not to exceed the maximum levy authorized by 76-1-405 for planning board purposes, under procedures set forth in Title 7, chapter 6, part 23.

History: En. Sec. 25, Ch. 246, L. 1957; amd. Sec. 9, Ch. 247, L. 1963; amd. Sec. 7, Ch. 273, L. 1971; R.C.M. 1947, 11-3825(5); amd. Sec. 4, Ch. 266, L. 1979.

76-1-404. Tax levy by county for city-county planning board authorized. When a city-county planning board has been established, the board of county commissioners may create a planning district which shall include that property within the jurisdictional areas as established pursuant to 76-1-504 through 76-1-507 which lies outside the limits of any incorporated cities and towns. The board of county commissioners may levy on all property located within such planning district a tax for planning board purposes, under procedures set forth in Title 7, chapter 6, part 23, provided such tax shall not exceed the maximum levy authorized in 76-1-405.

History: En. Sec. 25, Ch. 246, L. 1957; amd. Sec. 9, Ch. 247, L. 1963; amd. Sec. 7, Ch. 273, L. 1971; R.C.M. 1947, 11-3825(4).

76-1-405. Maximum county mill levy – authorization for levy. The tax levy for planning board purposes shall be limited as follows:

(1) A county of the first class, as defined in 7-1-2111, may levy a tax not to exceed 2 mills.

(2) A county of the second class may levy a tax not to exceed 3 mills.

(3) A county of the third class may levy a tax not to exceed 4 mills.

(4) A county of the fourth class may levy a tax not to exceed 5 mills.

(5) Counties of the fifth, sixth, and seventh classes may levy a tax not to exceed 6 mills.

History: En. Sec. 25, Ch. 246, L. 1957; amd. Sec. 9, Ch. 247, L. 1963; amd. Sec. 7, Ch. 273, L. 1971; R.C.M. 1947, 11-3825(part).

76-1-406. Tax levy by municipalities authorized. The governing body of any city or town represented upon a planning board may levy a tax upon the property located within such city or town for planning board purposes, under procedures set forth in Title 7, chapter 6, part 42, provided such tax shall not exceed the maximum levy authorized in 76-1-407.

History: En. Sec. 25, Ch. 246, L. 1957; amd. Sec. 9, Ch. 247, L. 1963; amd. Sec. 7, Ch. 273, L. 1971; R.C.M. 1947, 11-3825(3); amd. Sec. 5, Ch. 266, L. 1979.

76-1-407. Maximum city mill levy. The tax levy for planning board purposes shall be limited as follows:

(1) A city of the first class, as defined in 7-1-4111, may levy a tax not to exceed 2 mills.

(2) A city of the second class may levy a tax not to exceed 4 mills.

(3) A city of the third class may levy a tax not to exceed 6 mills.

(4) A town may levy a tax not to exceed 6 mills.

History: En. Sec. 25, Ch. 246, L. 1957; amd. Sec. 9, Ch. 247, L. 1963; amd. Sec. 7, Ch. 273, L. 1971; R.C.M. 1947, 11-3825(part).

76-1-408. Acceptance and administration of gifts and donations. (1) A city, county, or city-county planning board organized pursuant to the provisions of this chapter is hereby empowered and given the right to:

(a) accept, receive, take, hold, own, and possess any gift, donation, grant, devise, or bequest or any property (real, personal, or mixed) or any improved or unimproved park or playground; and

(b) utilize, hold, or dispose of the same for planning purposes not inconsistent with the provisions of this chapter.

(2) Any money so accepted shall be deposited with the city or county in a special nonreverting planning board fund to be available for expenditures by the planning board for the purpose designated by the donor. The disbursing officer of a city or county shall draw warrants against such special nonreverting fund only upon vouchers signed by the president and secretary of the planning board.

History: En. Sec. 27, Ch. 246, L. 1957; amd. Sec. 1, Ch. 133, L. 1965; R.C.M. 1947, 11-3827(part).

76-1-409. Acceptance and administration of government funds and services. Upon approval of the governing bodies represented on the board, a planning board may accept, receive, and expend funds, grants, and services from the federal government or its agencies and instrumentalities, from state or local governments or their agencies and instrumentalities, or from civic sources; may contract with respect thereto; and may provide such information and reports as may be necessary to secure such financial aid.

History: En. Sec. 27, Ch. 246, L. 1957; amd. Sec. 1, Ch. 133, L. 1965; R.C.M. 1947, 11-3827(part); amd. Sec. 6, Ch. 266, L. 1979.

Part 5
JURISDICTIONAL AREA

76-1-501. Jurisdictional area of county planning board. The board of county commissioners shall by resolution establish the jurisdictional area of the county planning board. The jurisdictional area shall include the area which is both outside the incorporated limits of any city in the county as well as outside the jurisdictional area of an existing city-county planning board established pursuant to 76-1-504 through 76-1-507. Should any city or town become represented on the county planning board pursuant to 76-1-111, the jurisdictional area of the county planning board shall be extended to include that city or town.

History: En. 11-3830.2 by Sec. 8, Ch. 273, L. 1971; R.C.M. 1947, 11-3830.2(1).

76-1-502. Filing of map of jurisdictional area of county planning board – revision of boundaries. The planning board, after the approval of the jurisdictional area by the board of county commissioners, shall file in the office of the clerk and recorder a map showing the boundaries of the jurisdictional area. The boundaries may be revised from time to time by resolution of the board of county commissioners. Such revised boundaries shall be shown upon a map which shall be filed as provided in this section. The area included in such map shall constitute the area over which the planning board shall have advisory jurisdiction.

History: En. 11-3830.2 by Sec. 8, Ch. 273, L. 1971; R.C.M. 1947, 11-3830.2(2).

76-1-503. Resolution of conflicts involving jurisdictional area of county planning boards. (1) In case an unincorporated area is within the potential jurisdiction of more than one planning board, then the boundary between the conflicting areas shall be determined by agreement between the planning boards involved with the approval of their respective governing bodies. Any map showing the boundary line so agreed upon and approved shall be filed as provided in 76-1-502 and thereafter shall fix the limit of territorial jurisdiction with respect to planning boards.

(2) In case the jurisdictional area of a city-county planning board, which is established subsequent to the establishment of a county planning board, is potentially within the jurisdiction of the county planning board, then the property outside any incorporated city between the conflicting areas shall be determined by agreement between the planning boards involved with the approval of the respective governing

bodies, and a map showing the boundary lines so agreed upon shall be filed as provided in 76-1-502 and thereafter shall fix the limits of the territorial jurisdiction of the respective planning boards.

History: En. 11-3830.2 by Sec. 8, Ch. 273, L. 1971; R.C.M. 1947, 11-3830.2(3), (4).

76-1-504. Jurisdictional area of city-county planning board. The governing bodies represented on a city-county planning board shall by separate resolution establish the jurisdictional area of the planning board. The jurisdictional area shall include the area within the incorporated limits of the city and such contiguous unincorporated area outside the city as, in the judgment of the respective governing bodies, bears reasonable relation to the development of the area involved.

History: En. Sec. 30, Ch. 246, L. 1957; amd. Sec. 3, Ch. 271, L. 1959; amd. Sec. 11, Ch. 247, L. 1963; amd. Sec. 1, Ch. 136, L. 1969; R.C.M. 1947, 11-3830(part).

76-1-505. Extension of boundaries of city-county planning board jurisdictional area. (1) The boundaries of the jurisdictional area can be extended further than 4½ miles from the limits of the cities only upon petition signed by 5% or more of the resident freeholders living in excess of 4½ miles and not more than 12 miles from the limits of the cities and within the area desiring to be included within said jurisdictional limits and upon presentation of said petition to the board of county commissioners.

(2) Thereafter, the board of county commissioners must by resolution set the proposed boundaries of said area and give notice of their intent to add said area to the jurisdictional limits theretofore created and of receipt of said petition by publication of notice of time and place of hearing on said petition and resolution. Said notice is to be published in a newspaper published in the county not less than 10 or more than 20 days prior to the date of said hearing. Thereafter, the boundaries of said area can only be set upon good cause being shown for the establishment of said extended jurisdictional area and the boundaries thereof, provided that such resolution shall not be adopted by the board of county commissioners if disapproved in writing by a majority of the freeholders of the territory proposed to be embraced. The jurisdictional area shall not extend more than 12 miles beyond the limits of any city within the jurisdictional area.

History: En. Sec. 30, Ch. 246, L. 1957; amd. Sec. 3, Ch. 271, L. 1959; amd. Sec. 11, Ch. 247, L. 1963; amd. Sec. 1, Ch. 136, L. 1969; R.C.M. 1947, 11-3830(part).

Cross-References

Publication of legal notices, 7-5-2411; Title 18, ch. 7, part 2.

76-1-506. Filing of map of jurisdictional area of city-county planning board – revision of boundaries. The planning board, after approval of the jurisdictional area by the governing bodies, shall file in the office of the clerk and recorder a map showing the boundaries of the jurisdictional area. The boundaries may be revised from time to time by resolutions of the governing bodies. Such revised boundaries shall be shown upon a map which shall be filed as provided in this section. The area included in such map shall constitute the area over which the planning board shall have advisory jurisdiction.

History: En. Sec. 30, Ch. 246, L. 1957; amd. Sec. 3, Ch. 271, L. 1959; amd. Sec. 11, Ch. 247, L. 1963; amd. Sec. 1, Ch. 136, L. 1969; R.C.M. 1947, 11-3830(2).

76-1-507. Resolution of conflicts over jurisdictional areas of several city-county planning boards. In case an unincorporated area is within the potential jurisdiction of more than one planning board, then the boundary between the conflicting areas shall be determined by agreement between the planning boards involved with the approval of their respective governing bodies. A map showing the boundary lines so agreed upon and approved shall be filed as provided in 76-1-506 and thereafter shall fix the limit of territorial jurisdiction of the respective planning boards.

History: En. Sec. 30, Ch. 246, L. 1957; amd. Sec. 3, Ch. 271, L. 1959; amd. Sec. 11, Ch. 247, L. 1963; amd. Sec. 1, Ch. 136, L. 1969; R.C.M. 1947, 11-3830(3).

76-1-508. Planning projects outside city-county planning board jurisdictional area – broad construction. (1) Any city-county planning board organized pursuant to the provisions of this chapter is hereby empowered, if requested by the board of county commissioners, to conduct specific planning projects within the county and outside of the jurisdictional area of said city-county planning board as defined in 76-1-504 through 76-1-507.

(2) Such authority to conduct specific planning projects outside of the jurisdictional area of the city-county planning board upon request of the board of county commissioners shall be broadly construed so as to enable the county to qualify under the provisions of and regulations governing any planning assistance program administered by any agency of the United States of America or the state of Montana.

History: En. Sec. 1, Ch. 190, L. 1965; R.C.M. 1947, 11-3830.1.

Part 6
MASTER PLAN

Part Cross-References

Compliance with plan required for annexation, 7-2-4734(3).
Publication of legal notices, 7-5-2411; Title 18, ch. 7, part 2.
Compliance required by cemetery associations, 35-20-201.

76-1-601. Master plan – contents. The planning board shall prepare and propose a master plan for the jurisdictional area. The plan may propose ordinances or resolutions for possible adoption by the appropriate governing body. The plan may include:

(1) careful and comprehensive surveys and studies of existing conditions and the probable future growth of the city and its environs or of the county;

(2) maps, plats, charts, and descriptive material presenting basic information, locations, extent, and character of any of the following:

(a) history, population, and physical site conditions;

(b) land use, including the height, area, bulk, location, and use of private and public structures and premises;

(c) population densities;

(d) community centers and neighborhood units;

(e) blighted and slum areas;

(f) streets and highways, including bridges, viaducts, subways, parkways, alleys, and other public ways and places;

(g) sewers, sanitation, and drainage, including handling, treatment, and disposal of excess drainage waters, sewage, garbage, refuse, and other wastes;

(h) flood control and prevention;

(i) public and private utilities, including water, light, heat, communication, and other services;

(j) transportation, including rail, bus, truck, air, and water transport and their terminal facilities;

(k) local mass transit, including motor and trolley bus; street, elevated, or underground railways; and taxicabs;

(l) parks and recreation, including parks, playgrounds, reservations, forests, wildlife refuges, and other public grounds, spaces, and facilities of a recreational nature;

(m) public buildings and institutions, including governmental administration and service buildings, hospitals, infirmaries, clinics, penal and correctional institutions, and other civic and social service buildings;

(n) education, including location and extent of schools, colleges, and universities;

(o) land utilization, including areas for manufacturing and industrial uses, concentration of wholesale business, retail business, and other commercial uses, residential uses, and areas for mixed uses;

(p) conservation of water, soil, agricultural, and mineral resources;

(q) any other factors which are a part of the physical, economic, or social situation within the city or county;

(3) reports, maps, charts, and recommendations setting forth plans for the development, redevelopment, improvement, extension, and revision of the subjects and physical situations of the city or county set out in subsection (2) so as to substantially accomplish the object of this chapter as set out in 76-1-101 and 76-1-102;

(4) a long-range development program of public works projects, based on the recommended plans of the planning board, for the purpose of eliminating unplanned, unsightly, untimely, and extravagant projects and with a view to stabilizing industry and employment and the keeping of such program up-to-date for all separate taxing units within the city or county, respectively, for the purpose of assuring efficient and economic use of public funds;

(5) recommendations setting forth the development, improvement, and extension of areas, if any, to be set aside for use as trailer courts and sites for mobile homes.

History: Ap. p. Sec. 31, Ch. 246, L. 1957; amd. Sec. 12, Ch. 247, L. 1963; amd. Sec. 1, Ch. 156, L. 1973; Sec. 11-3831, R.C.M. 1947; Ap. p. Sec. 3, Ch. 246, L. 1957; amd. Sec. 2, Ch. 247, L. 1963; amd. Sec. 1, Ch. 349, L. 1973; Sec. 11-3803, R.C.M. 1947; R.C.M. 1947, 11-3803(part), 11-3831.

76-1-602. Public hearing on proposed master plan. (1) Prior to the submission of the proposed master plan to the governing bodies, the board shall give notice and hold a public hearing on the plan.

(2) At least 10 days prior to the date set for hearing, the board shall publish in a newspaper of general circulation in the jurisdictional area a notice of the time and place of the hearing.

History: En. Sec. 33, Ch. 246, L. 1957; amd. Sec. 13, Ch. 247, L. 1963; R.C.M. 1947, 11-3833.

76-1-603. Adoption of master plan by planning board. After consideration of the recommendations and suggestions elicited at the public hearing, the planning board shall by resolution recommend the proposed master plan and any proposed ordinances and resolutions for its implementation to the governing bodies of the governmental units represented on the board.

History: En. Sec. 34, Ch. 246, L. 1957; amd. Sec. 14, Ch. 247, L. 1963; R.C.M. 1947, 11-3834.

76-1-604. Adoption, revision, or rejection of master plan. (1) The governing bodies shall adopt a resolution of intention to adopt, revise, or reject the proposed plan or any of its parts.

(2) If the governing bodies adopt a resolution of intention to adopt the proposed plan or any of its parts, they may, in their discretion, submit to the qualified electors of the jurisdictional area included within the proposed plan at the next primary or general election or at a special election the referendum question of whether or not the plan should be adopted. A special election must be held in conjunction with a regular or primary election. Except as provided in this section, the provisions of Title 7, chapter 5, part 1, apply to the referendum election.

(3) The governing bodies may adopt, revise, or repeal a master plan under this section.

(4) The qualified electors of the jurisdictional area included within the master plan may by initiative or referendum, as provided in 7-5-131 through 7-5-137, adopt, revise, or repeal a master plan under this section.

History: En. Sec. 40, Ch. 246, L. 1957; amd. Sec. 15, Ch. 247, L. 1963; R.C.M. 1947, 11-3840(part); amd. Sec. 1, Ch. 541, L. 1981; amd. Sec. 68, Ch. 387, L. 1995.

76-1-605. Use of adopted master plan. After adoption of the master plan, the city council, the board of county commissioners, or other governing body within the territorial jurisdiction of the board shall be guided by and give consideration to the general policy and pattern of development set out in the master plan in the:

(1) authorization, construction, alteration, or abandonment of public ways, public places, public structures, or public utilities;

(2) authorization, acceptance, or construction of water mains, sewers, connections, facilities, or utilities;

(3) adoption of subdivision controls;

(4) adoption of zoning ordinances or resolutions.

History: En. Sec. 40, Ch. 246, L. 1957; amd. Sec. 15, Ch. 247, L. 1963; R.C.M. 1947, 11-3840(part).

76-1-606. Effect of master plan on subdivisions and plats. (1) Where a master plan has been approved, the city council may by ordinance or the board of county commissioners may by resolution require subdivision plats to conform to the provisions of the master plan. Certified copies of such ordinance shall be filed with the city or town clerk and with the county clerk and recorder of the county.

(2) Thereafter:

(a) a plat involving lands within the corporate limits of the city and covered by said master plan shall not be filed without first presenting it to the planning board, which shall make a report to the city council advising as to compliance or noncompliance of the plat with the master plan. The city council shall have the final authority to approve the filing of such plat.

(b) a plat involving lands outside the corporate limits of the city and covered by said master plan shall not be filed without first presenting it to the planning board which shall make a report to the board of county commissioners advising as to compliance or noncompliance of the plat with the master plan. The board of county commissioners shall have the final authority to approve the filing of such plat.

(3) Nothing herein contained shall be interpreted to limit the present powers of the city or county governments but shall be an additional requirement before any plat may be filed of record or entitled to be recorded.

History: En. Sec. 42, Ch. 246, L. 1957; amd. Sec. 4, Ch. 271, L. 1959; amd. Sec. 16, Ch. 247, L. 1963; amd. Sec. 9, Ch. 273, L. 1971; R.C.M. 1947, 11-3842.

CHAPTER 2

PLANNING AND ZONING

Part 1 – County Planning and Zoning Commission

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Part 1

County Planning and Zoning Commission

Part Cross-References

Inclusion of zoning district within municipal jurisdictional area, 50-60-101(9)(b).

76-2-101. Planning and zoning commission and district. (1) Subject to the provisions of subsection (5), whenever the public interest or convenience may require and upon petition of 60% of the freeholders affected thereby, the board of county commissioners is hereby authorized and empowered to order and create a planning and zoning district and to appoint a commission consisting of five members.

(2) No such planning or zoning district may be created in an area which has been zoned by an incorporated city pursuant to 76-2-310 and 76-2-311.

(3) For the purposes of this part, the word "district" shall mean any area that consists of not less than 40 acres.

(4) Except as provided in subsection (5), an action challenging the creation of a planning and zoning district must be commenced within 5 years after the date of the order by the board of county commissioners creating the district.

(5) If freeholders representing 50% of the titled property ownership in the district protest the establishment of the district within 30 days of its creation, the board of county commissioners may not create the district. An area included in a district protested under this subsection may not be included in a zoning district petition under this section for a period of 1 year.

History: (1), (2)En. Sec. 1, Ch. 154, L. 1953; amd. Sec. 16, Ch. 273, L. 1971; Sec. 16-4101, R.C.M. 1947; (3)En. Sec. 7, Ch. 154, L. 1953; amd. Sec. 1, Ch. 229, L. 1955; Sec. 16-4107, R.C.M. 1947; R.C.M. 1947, 16-4101(part), 16-4107; (4)En. Sec. 1, Ch. 441, L. 1989; amd. Sec. 1, Ch. 591, L. 1995.

76-2-102. Organization and operation of commission. (1) The commission is to consist of the three county commissioners, the county surveyor, and a county official appointed by the county commissioners. Members of the commission shall serve without compensation other than reimbursement for duly authorized expenses and must be residents of the county in which they serve.

(2) The commission may appoint necessary employees and fix their compensation with the approval of the board of county commissioners, select a presiding officer to serve for 1 year, appoint a secretary to keep permanent and complete records of its proceedings, and adopt rules governing the transaction of its business.

(3) The finances necessary for the transaction of the planning and zoning commission's business and to pay the expenses of the employees and justified expenses of the members of the board must be paid from a levy of not to exceed 1 mill on the taxable valuation of the real property within the district.

History: En. Sec. 1, Ch. 154, L. 1953; amd. Sec. 16, Ch. 273, L. 1971; R.C.M. 1947, 16-4101(part); amd. Sec. 137, Ch. 27, Sp. L. November 1993.

76-2-103. Powers of commission and employees. (1) In general, the planning and zoning commission shall have such powers as may be appropriate to enable it to fulfill its functions and duties to promote county planning and to carry out the purposes of this part.

(2) The planning and zoning commission and any of its members, officers, and employees in the performance of their functions may enter upon any land and make examinations and surveys and place and maintain the necessary monuments and markers thereon.

History: En. Sec. 4, Ch. 154, L. 1953; R.C.M. 1947, 16-4104(part).

76-2-104. Development pattern. (1) For the purpose of furthering the health, safety, and general welfare of the people of the county, the county planning and zoning commission hereby is empowered and it shall be its duty to make and adopt a development pattern for the physical and economic development of the planning and zoning district.

(2) Such development pattern, with the accompanying maps, plats, charts, and descriptive matter, shall show the planning and zoning commission's recommendations for the development of the districts, within some of which it shall be lawful and within others of which it shall be unlawful to erect, construct, alter, or maintain certain buildings or to carry on certain trades, industries, or callings or within which the height and bulk of future buildings and the area of the yards, courts, and other open spaces and the future uses of the land or buildings shall be limited and future building setback lines shall be established.

History: En. Sec. 2, Ch. 154, L. 1953; R.C.M. 1947, 16-4102(part).

76-2-105. Continuation of prior nonconforming uses. Existing nonconforming uses may be continued although not in conformity with such zoning regulations.

History: En. Sec. 2, Ch. 154, L. 1953; R.C.M. 1947, 16-4102(part).

76-2-106. Adoption of development district. (1) Adoption by the planning and zoning commission of the development district or any change therein may be in whole or in part but must be by the affirmative vote of the majority of the whole commission, provided, however, that prior to any such adoption, a public hearing shall have been held not less than 15 days after notice thereof shall have been posted in at least three public places within the area affected.

(2) The resolution adopting the district or any part or parts covering one or more of the functional elements which may be included within the district shall refer expressly to the maps, charts, and descriptive matters forming the pattern or part thereof. The board of county commissioners shall have the power to authorize such variance from the recommendations of the planning commission as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the decision of the planning and zoning commission will result in unnecessary hardship.

History: En. Sec. 3, Ch. 154, L. 1953; R.C.M. 1947, 16-4103.

76-2-107. Preparation of resolutions and other materials. The planning and zoning commission may, for the benefit and welfare of the county, prepare and submit to the board of county commissioners drafts of resolutions for the purpose of carrying out the development districts or any part thereof previously adopted by the commission, including zoning and land use regulations, the making of official maps, and the preservation of the integrity thereof and including procedure for appeals from decisions made under the authority of such regulations and regulations for the conservation of the natural resources of the county. The board of county commissioners is hereby authorized to adopt such resolutions.

History: En. Sec. 5, Ch. 154, L. 1953; R.C.M. 1947, 16-4105(part).

76-2-108. Permits authorized. The planning and zoning commission hereby is empowered to authorize and provide for the issuance of permits as a prerequisite to construction, alteration, or enlargement of any building or structure otherwise subject to the provisions of this part and may establish and collect reasonable fees therefor. The fees so collected are to go to the general fund of the county.

History: En. Sec. 5, Ch. 154, L. 1953; R.C.M. 1947, 16-4105(part).

76-2-109. Effect on natural resources. No planning district or recommendations adopted under this part shall regulate lands used for grazing, horticulture, agriculture, or the growing of timber.

History: En. Sec. 2, Ch. 154, L. 1953; R.C.M. 1947, 16-4102(part).

76-2-110. Appeal procedure. Any person aggrieved by any decision of the commission or the board of county commissioners may, within 30 days after such decision or order, appeal to the district court in the county in which the property involved is located.

History: En. Sec. 5, Ch. 154, L. 1953; R.C.M. 1947, 16-4105(part).

76-2-111. Cooperation by public agencies with commission. All public officials, departments, and agencies having information, maps, and data deemed by the commission pertinent to county planning are hereby empowered and directed to make such information available for the use of the county planning and zoning commission.

History: En. Sec. 4, Ch. 154, L. 1953; R.C.M. 1947, 16-4104(part).

76-2-112. Effect on powers of incorporated communities to plan adjacent areas. The authority heretofore granted by law to the incorporated communities to approve subdivision plats within the unincorporated area adjacent to their corporate limits is not abrogated by this part except and until the board of county commissioners having jurisdiction over such adjacent area establishes a planning commission and adopts initial regulations for subdivision control within adjacent areas or districts. Authority of the adjacent municipality shall be suspended on the effective date of the county regulation with respect to all areas governed by county subdivision regulations.

History: En. Sec. 6, Ch. 154, L. 1953; R.C.M. 1947, 16-4106.

Part 2
County Zoning

Part Cross-References

Inclusion of zoning district within municipal jurisdictional area, 50-60-101(9)(b).

76-2-201. County zoning authorized. For the purpose of promoting the health, safety, morals, and general welfare of the people in cities and towns and counties whose governing bodies have adopted a comprehensive development plan for jurisdictional areas pursuant to chapter 1, the boards of county commissioners in such counties are authorized to adopt zoning regulations for all or parts of such jurisdictional areas in accordance with the provisions of this part.

History: En. Sec. 1, Ch. 246, L. 1963; R.C.M. 1947, 16-4701.

76-2-202. Establishment of zoning districts – regulations. (1) (a) Within the unincorporated portions of a jurisdictional area that has been established under provisions of 76-1-501 through 76-1-503 or 76-1-504 through 76-1-507, the board of county commissioners may by resolution establish zoning districts and zoning regulations for all or part of the jurisdictional area.

(b) An action challenging the creation of a zoning district must be commenced within 5 years after the date of the order by the board of county commissioners creating the district.

(2) Within some zoning districts, it is lawful and within others it is unlawful to erect, construct, alter, or maintain certain buildings or to carry on certain trades, industries, or callings.

(3) In a proceeding for a permit or variance to place manufactured housing within a residential zoning district, there is a rebuttable

presumption that placement of a manufactured home will not adversely affect property values of conventional housing.

(4) Within each district the height and bulk of future buildings and the area of the yards, courts, and other open spaces and the future uses of the land or buildings must be limited and future building setback lines must be established.

(5) All regulations must be uniform for each class or kind of buildings throughout a district, but the regulations in one district may differ from those in other districts.

(6) As used in this section, "manufactured housing" means a single-family dwelling, built offsite in a factory on or after January 1, 1990, that is placed on a permanent foundation, is at least 1,000 square feet in size, has a pitched roof and siding and roofing materials that are customarily, as defined by local regulations, used on site-built homes, and is in compliance with the applicable prevailing standards of the United States department of housing and urban development at the time of its production. A manufactured home does not include a mobile home or house trailer, as defined in 61-1-501.

(7) Nothing contained in this section may be construed to limit conditions imposed in historic districts, local design review standards, existing covenants, or the ability to enter into covenants pursuant to Title 70, chapter 17, part 2.

History: En. Sec. 3, Ch. 246, L. 1963; amd. Sec. 18, Ch. 273, L. 1971; R.C.M. 1947, 16-4703; (1)(b)En. Sec. 2, Ch. 441, L. 1989; amd. Sec. 1, Ch. 505, L. 1993; amd. Sec. 274, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 in (1)(b), near middle after "commenced", deleted "by October 1, 1994, or" and at end deleted "if the district was created after October 1, 1989"; in (6), near end, substituted "mobile home or house trailer, as defined in 61-1-501" for "mobile home, as defined in 61-4-309, or a house trailer, as defined in 61-1-501"; and made minor changes in style. Amendment effective March 12, 1997.

76-2-203. Criteria and guidelines for zoning regulations. The zoning regulations shall be made in accordance with a comprehensive development plan and shall be designed to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote health and general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. Such zoning regulations shall be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such jurisdictional area. The zoning regulations shall, as nearly as possible, be made compatible with the zoning ordinances of the municipality within the jurisdictional area.

History: En. Sec. 4, Ch. 246, L. 1963; R.C.M. 1947, 16-4704.

76-2-204. Role of planning boards. (1) The board of county commissioners shall require the county planning board and the city-county planning board to recommend boundaries and appropriate regulations for the various zoning districts. The county planning board and the city-county planning board shall make written reports of their recommendations to the board of county commissioners, but such recommendations shall be advisory only.

(2) This section shall apply to either the county planning board or the city-county planning board where only one of these planning boards has been established.

History: En. Sec. 2, Ch. 246, L. 1963; amd. Sec. 17, Ch. 273, L. 1971; R.C.M. 1947, 16-4702.

76-2-205. Procedure for adoption of regulations and boundaries. The board of county commissioners shall observe the following procedures in the establishment or revision of boundaries for zoning districts and in the adoption or amendment of zoning regulations:

(1) Notice of a public hearing on the proposed zoning district boundaries and of regulations for the zoning district must be published once a week for 2 weeks in a newspaper of general circulation within the county. The notice must state:

(a) the boundaries of the proposed district;

(b) the general character of the proposed zoning regulations;

(c) the time and place of the public hearing;

(d) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder.

(2) At the public hearing, the board of county commissioners shall give the public an opportunity to be heard regarding the proposed zoning district and regulations.

(3) After the public hearing, the board of county commissioners shall review the proposals of the planning board and shall make any revisions or amendments that it determines to be proper.

(4) The board of county commissioners may pass a resolution of intention to create a zoning district and to adopt zoning regulations for the district.

(5) The board of county commissioners shall publish notice of passage of the resolution of intention once a week for 2 weeks in a

newspaper of general circulation within the county. The notice must state:

(a) the boundaries of the proposed district;

(b) the general character of the proposed zoning regulations;

(c) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder;

(d) that for 30 days after first publication of this notice, the board of county commissioners will receive written protests to the creation of the zoning district or to the zoning regulations from persons owning real property within the district whose names appear on the last-completed assessment roll of the county.

(6) Within 30 days after the expiration of the protest period, the board of county commissioners may in its discretion adopt the resolution creating the zoning district or establishing the zoning regulations for the district. However, if 40% of the freeholders within the district whose names appear on the last-completed assessment roll or if freeholders representing 50% of the titled property ownership whose property is taxed for agricultural purposes under 15-7-202 or whose property is taxed as forest land under Title 15, chapter 44, part 1, have protested the establishment of the district or adoption of the regulations, the board of county commissioners may not adopt the resolution and a further zoning resolution may not be proposed for the district for a period of 1 year.

History: En. Sec. 5, Ch. 246, L. 1963; amd. Sec. 19, Ch. 273, L. 1971; R.C.M. 1947, 16-4705; amd. Sec. 2, Ch. 591, L. 1995.

76-2-206. Interim zoning map or regulation. (1) If a county is conducting or in good faith intends to conduct studies within a reasonable time or has held or is holding a hearing for the purpose of considering a master plan or zoning regulations or an amendment, extension, or addition to either pursuant to this part, the board of county commissioners in order to promote the public health, safety, morals, and general welfare may adopt as an emergency measure a temporary interim zoning map or temporary interim zoning regulation, the purpose of which shall be to classify and regulate uses and related matters as constitutes the emergency.

(2) Such interim resolution shall be limited to 1 year from the date it becomes effective. The board of county commissioners may extend such interim resolution for 1 year, but not more than one such extension may be made.

History: En. 16-4711 by Sec. 20, Ch. 273, L. 1971; R.C.M. 1947, 16-4711.

76-2-207. Permits authorized. The board of county commissioners may provide for the issuance of location or conformance permits and may collect a fee for each such permit. The proceeds of such fees shall be deposited in the general fund of the county.

History: En. Sec. 8, Ch. 246, L. 1963; R.C.M. 1947, 16-4708(part).

76-2-208. Continuation of nonconforming uses. Any lawful use which is made of land or buildings at the time any zoning resolution is adopted by the board of county commissioners may be continued although such use does not conform to the provisions of such resolution.

History: En. Sec. 9, Ch. 246, L. 1963; R.C.M. 1947, 16-4709.

76-2-209. Effect on natural resources. (1) Except as provided in 82-4-431 and 82-4-432, a resolution or rule adopted pursuant to the provisions of this part, except 76-2-206, may not prevent the complete use, development, or recovery of any mineral, forest, or agricultural resources by the owner thereof.

(2) The complete use, development, or recovery of a mineral by an operation that mines sand and gravel and an operation that mixes concrete or batches asphalt on a site that is located within a geographic area zoned as residential are subject to the zoning regulations adopted under this chapter.

History: En. Sec. 10, Ch. 246, L. 1963; R.C.M. 1947, 16-4710; amd. Sec. 2, Ch. 408, L. 1991.

76-2-210. Enforcement of zoning provisions. (1) In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or any building, structure, or land is used in violation of this part or of any resolution made under authority conferred hereby, the proper authorities of the county, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use; to restrain, correct, or abate such violation; to prevent the occupancy of such building, structure, or land; or to prevent any illegal act, conduct, business, or use in or about such premises.

(2) The board of county commissioners may appoint enforcing officers to supervise and enforce the provisions of the zoning resolutions.

History: En. Secs. 7, 8, Ch. 246, L. 1963; R.C.M. 1947, 16-4707(part), 16-4708(part).

76-2-211. Violations and penalties. A violation of this part or any resolution adopted pursuant thereto is a misdemeanor and shall be punishable by a fine not exceeding $500 or imprisonment in the county jail not exceeding 6 months or both.

History: En. Sec. 7, Ch. 246, L. 1963; R.C.M. 1947, 16-4707(part); amd. Sec. 7, Ch. 266, L. 1979.

76-2-212 through 76-2-219 reserved.

76-2-220. Zoning commission – appointment – duties. (1) For the purpose of providing an optional method of amending any zoning regulations or zoning classification, the county commissioners may appoint a zoning commission to recommend amendments to the zoning regulations and classifications. Such a zoning commission must be composed of at least five citizen members appointed at large from the zoning district. The county commissioners may adopt bylaws for the zoning commission pertaining to the qualifications of the members and such other matters as the commissioners consider necessary.

(2) If a commission is appointed, it shall hold a public hearing to receive relevant testimony. The hearing, which may be held jointly with the hearing by the county commissioners, must be upon at least 15 days' notice of the time and place of the hearing and must be published in the contracted newspaper provided for in 7-5-2411 or a newspaper of general circulation in the county. Recommendations of the zoning commission must be submitted to the county commissioners.

History: En. Sec. 1, Ch. 462, L. 1981.

76-2-221. Board of adjustment. (1) The board of county commissioners shall provide for the appointment of a board of adjustment and in the regulations and restrictions adopted pursuant to the authority of this part shall provide that the board of adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the zoning resolution in harmony with its general purposes and intent and in accordance with the general or specific rules of this part.

(2) The board of adjustment shall adopt rules in accordance with the provisions of any resolution adopted pursuant to this part. Meetings of the board of adjustment shall be held at the call of the chairman and at such times as the board may determine. Such chairman or in his absence the acting chairman may administer oaths and compel the attendance of witnesses.

History: En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(part).

76-2-222. Membership and term of board members – vacancies. (1) The board of adjustment consists of five members, each to be appointed for a term of 2 years and removable for cause by the board of county commissioners upon written charges and after public hearing. The board of county commissioners may designate the same persons to act as members of the board of adjustment for unincorporated portions of the jurisdictional area as may be appointed by the municipality within the jurisdictional area under provisions of 76-2-321 through 76-2-328.

(2) Vacancies must be filled for the unexpired term of any member whose term becomes vacant.

History: En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(1); amd. Sec. 1, Ch. 47, L. 1987; amd. Sec. 275, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 in (1), at beginning, deleted "Except as provided in subsection (3)"; deleted (3) that read: "(3) Within 30 days after January 1, 1988, the board of county commissioners shall designate two members of the board of adjustment whose terms must end in 1988 and three members whose terms must end in 1989. Subsequent appointments must be made for a term of 2 years"; and made minor changes in style. Amendment effective March 12, 1997.

76-2-223. Powers of board of adjustment. (1) The board of adjustment shall have the following powers:

(a) to hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this part or of any resolution adopted pursuant thereto;

(b) to hear and decide special exceptions to the terms of the zoning resolution upon which said board is required to pass under such resolution;

(c) to authorize upon appeal in specific cases such variance from the terms of the resolution as will not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of the resolution will result in unnecessary hardship and so that the spirit of the resolution shall be observed and substantial justice done.

(2) In exercising the above-mentioned powers, the board of adjustment may, in conformity with the provisions of this part, reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made and to that end shall have all the powers of the officer from whom the appeal is taken.

History: En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(5), (6).

76-2-224. Vote needed for board action. The concurring vote of three members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official; to decide in favor of the applicant on any matter upon which it is required to pass under any such resolution; or to effect any variation in such resolution.

History: En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(7).

76-2-225. Public access to board activities. (1) All meetings of the board shall be open to the public.

(2) The board shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

History: En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(part).

Cross-References

Right of public participation, Art. II, sec. 8, Mont. Const.; Title 2, ch. 3, part 1.
Open meeting law, Art. II, sec. 9, Mont. Const.; Title 2, ch. 3, part 2.

76-2-226. Appeals to board of adjustment. (1) Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board, or bureau of the county affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof.

(2) The officer from whom the appeal is taken shall forthwith transmit to the board all papers constituting the record upon which the action appealed was taken.

(3) An appeal stays all proceedings in furtherance of the action appealed from unless the officer from whom the appeal is taken certifies to the board of adjustment after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed other than by a restraining order, which may be granted by the board of adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown.

(4) The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof as well as due notice to the parties in interest, and decide the same within a reasonable time.

(5) Upon the hearing, any party may appear in person or by his attorney.

History: En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(3), (4).

76-2-227. Appeals from board to court of record. (1) Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment or any taxpayer or any officer, department, board, or bureau of the county may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within 30 days after the filing of the decision in the office of the board.

(2) Upon presentation of such petition, the court may allow a writ of certiorari directed to the board of adjustment to review such decision of the board of adjustment and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than 10 days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may (upon application, on notice to the board, and on due cause shown) grant a restraining order. The board of adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

(3) If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, the court may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made.

(4) The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

History: **En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(8) thru (11).**

76-2-228. Awarding of costs upon appeal from board decision. Costs shall not be allowed against the board unless it shall appear to the court that it acted with gross negligence, in bad faith, or with malice in making the decision appealed from.

History: **En. Sec. 6, Ch. 246, L. 1963; R.C.M. 1947, 16-4706(12).**

Part 3
Municipal Zoning

76-2-301. Municipal zoning authorized. For the purpose of promoting health, safety, morals, or the general welfare of the community, the city or town council or other legislative body of cities and incorporated towns is hereby empowered to regulate and restrict the height, number of stories, and size of buildings and other structures; the percentage of lot that may be occupied; the size of yards, courts, and other open spaces; the density of population; and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes.

History: En. Sec. 1, Ch. 136, L. 1929; re-en. Sec. 5305.1, R.C.M. 1935; R.C.M. 1947, 11-2701.

Cross-References

Incorporation of technical codes by reference, 7-5-4202.

76-2-302. Zoning districts. (1) For the purposes of 76-2-301, the local city or town council or other legislative body may divide the municipality into districts of the number, shape, and area as are considered best suited to carry out the purposes of this part. Within the districts, it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land.

(2) All regulations must be uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from those in other districts.

(3) In a proceeding for a permit or variance to place manufactured housing within a residential zoning district, there is a rebuttable presumption that placement of a manufactured home will not adversely affect property values of conventional housing.

(4) As used in this section, "manufactured housing" means a single-family dwelling, built offsite in a factory on or after January 1, 1990, that is placed on a permanent foundation, is at least 1,000 square feet in size, has a pitched roof and siding and roofing materials that are customarily, as defined by local regulations, used on site-built homes, and is in compliance with the applicable prevailing standards of the United States department of housing and urban development at the time of its production. A manufactured home does not include a mobile home or housetrailer, as defined in 61-1-501.

(5) This section may not be construed to limit conditions imposed in historic districts, local design review standards, existing covenants, or the ability to enter into covenants pursuant to Title 70, chapter 17, part 2.

History: En. Sec. 2, Ch. 136, L. 1929; re-en. Sec. 5305.2, R.C.M. 1935; amd. Sec. 1, Ch. 273, L. 1971; amd. Sec. 1, Ch. 354, L. 1973; R.C.M. 1947, 11-2702(1); amd. Sec. 2, Ch. 505, L. 1993; amd. Sec. 276, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 in (4), near end, substituted "mobile home or housetrailer, as defined in 61-1-501" for "mobile home, as defined in 61-4-309, or a housetrailer, as defined in 61-1-501"; and made minor changes in style. Amendment effective March 12, 1997.

76-2-303. Procedure to administer certain annexations and zoning laws – hearing and notice. (1) The city or town council or other legislative body of a municipality shall provide for the manner in which regulations and restrictions and the boundaries of districts are determined, established, and enforced and from time to time amended, supplemented, or changed.

(2) However, a regulation, restriction, or boundary may not become effective until after a public hearing in relation to the regulation, restriction, or boundary at which parties in interest and citizens have an opportunity to be heard has been held. At least 15 days' notice of the time and place of the hearing must be published in an official paper or a paper of general circulation in the municipality.

(3) For municipal annexations, a municipality may conduct a hearing on the annexation in conjunction with a hearing on the zoning of the proposed annexation, provided that the municipality continues on the annexed property a land use comparable to the land use authorized by county zoning. A joint hearing authorized under this subsection fulfills a municipality's obligation regarding zoning notice and public hearing for a proposed annexation.

History: En. Sec. 4, Ch. 136, L. 1929; re-en. Sec. 5305.4, R.C.M. 1935; R.C.M. 1947, 11-2704; amd. Sec. 1, Ch. 217, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 217 inserted (3) regarding a municipal annexation hearing or joint annexation and zoning hearing; and made minor changes in style.

Cross-References

Publication of legal notices, 7-5-2411; Title 18, ch. 7, part 2.

76-2-304. Purposes of zoning. (1) Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

(2) Such regulations shall be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality.

History: En. Sec. 3, Ch. 136, L. 1929; re-en. Sec. 5305.3, R.C.M. 1935; R.C.M. 1947, 11-2703.

76-2-305. Alteration of zoning regulations – protest. (1) Such regulations, restrictions, and boundaries may from time to time be amended, supplemented, changed, modified, or repealed. The provisions of 76-2-303 relative to public hearings and official notice shall apply equally to all changes or amendments.

(2) In case, however, of a protest against such change signed by the owners of 20% or more either of the area of the lots included in such proposed change or of those immediately adjacent in the rear thereof extending 150 feet therefrom or of those adjacent on either side thereof within the same block or of those directly opposite thereof extending 150 feet from the street frontage of such opposite lots, such amendment shall not become effective except by the favorable vote of three-fourths of all the members of the city or town council or legislative body of such municipality.

History: En. Sec. 5, Ch. 136, L. 1929; re-en. Sec. 5305.5, R.C.M. 1935; amd. Sec. 1, Ch. 161, L. 1969; R.C.M. 1947, 11-2705.

76-2-306. Interim zoning ordinances. (1) The city or town council or other legislative body of such municipality, to protect the public safety, health, and welfare and without following the procedures otherwise required preliminary to the adoption of a zoning ordinance, may adopt as an urgency measure an interim ordinance prohibiting any uses which may be in conflict with a contemplated zoning proposal which the legislative body is considering or studying or intends to study within a reasonable time.

(2) Such interim ordinance shall only be applicable within the city limits and up to 1 mile beyond the corporate boundaries of the city or town and shall take effect upon passage; provided, however, a hearing is first held upon notice reasonably designed to inform all affected parties and in no event shall notice be less than publication in a newspaper of general circulation at least 7 days before the hearing.

(3) Such interim ordinance shall be of no further force and effect 6 months from the date of adoption thereof. However, after notice pursuant to 76-2-303 and pursuant to public hearing, the legislative body

may extend such interim ordinance for 1 year. Any such extension shall require a two-thirds vote for passage and shall become effective upon passage. Not more than two such extensions may be adopted.

History: En. 11-2711 by Sec. 1, Ch. 488, L. 1975; R.C.M. 1947, 11-2711.

76-2-307. Zoning commission. In order to avail itself of the powers conferred by this part, except 76-2-306, the city or town council or other legislative body shall appoint a commission, to be known as the zoning commission, to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and such city or town council or other legislative body shall not hold its public hearings or take action until it has received the final report of such commission.

History: En. Sec. 6, Ch. 136, L. 1929; re-en. Sec. 5305.6, R.C.M. 1935; R.C.M. 1947, 11-2706.

Cross-References

When zoning commission to act as airport zoning commission, 67-6-202.
City-County Planning Boards, Title 76, ch. 1.

76-2-308. Enforcement of zoning regulations and ordinances. (1) The city or town council or other legislative body may provide by ordinance for the enforcement of this part and of any regulation or ordinance made thereunder.

(2) In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or any building, structure, or land is used in violation of this part or of any ordinance or other regulation made under authority conferred hereby, the proper local authorities of the municipality, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use; to restrain, correct, or abate such violation; to prevent the occupancy of such building, structure, or land; or to prevent any illegal act, conduct, business, or use in or about such premises.

History: En. Sec. 8, Ch. 136, L. 1929; re-en. Sec. 5305.8, R.C.M. 1935; R.C.M. 1947, 11-2708(part); amd. Sec. 8, Ch. 266, L. 1979.

76-2-309. Conflict with other laws. (1) Wherever the regulations made under authority of this part require a greater width or size of yards, courts, or other open spaces; require a lower height of building or less number of stories; require a greater percentage of lot to be left unoccupied; or impose other higher standards than are required in any other statute or local ordinance or regulation, the provisions of the regulations made under authority of this part shall govern.

(2) Wherever the provisions of any other statute or local ordinance or regulation require a greater width or size of yards, courts, or other open spaces; require a lower height of building or a less number of stories; require a greater percentage of lot to be left unoccupied; or impose other higher standards than are required by the regulations made under authority of this part, the provisions of such statute or local ordinance or regulation shall govern.

History: En. Sec. 9, Ch. 136, L. 1929; re-en. Sec. 5305.9, R.C.M. 1935; R.C.M. 1947, 11-2709.

76-2-310. Extension of municipal zoning and subdivision regulations beyond municipal boundaries. (1) The local city or town council or other legislative body which has adopted a master plan pursuant to chapter 1 may extend the application of its zoning or subdivision regulations, or both, beyond its limits in any direction but not in a county which has adopted such regulations within the contemplated area.

(2) (a) A city of the first class as defined in 7-1-4111 may not extend the application of its zoning or subdivision regulations, or both, more than 3 miles beyond its limits, a city of the second class may not so extend more than 2 miles beyond its limits, and a city or town of the third class may not so extend more than 1 mile beyond its limits.

(b) Where two or more noncontiguous cities have boundaries so near to one another as to create an area of potential conflict in the event that all cities concerned should exercise the full powers conferred by this section, 76-2-302, and 76-2-311, then the extension of zoning or subdivision regulations, or both, by these cities shall terminate at a boundary line agreed upon by the cities so concerned.

History: En. Sec. 2, Ch. 136, L. 1929; re-en. Sec. 5305.2, R.C.M. 1935; amd. Sec. 1, Ch. 273, L. 1971; amd. Sec. 1, Ch. 354, L. 1973; R.C.M. 1947, 11-2702(part).

76-2-311. Administration of regulations in extended area. (1) Any city or town council or other legislative body may thereafter enforce such regulations in the area to the same extent, as if such property were situated within its corporate limits, until the county board adopts a master plan pursuant to chapter 1 and accompanying zoning or subdivision resolutions, or both, which include the area.

(2) As a prerequisite to the exercise of this power, a city-county planning board whose jurisdictional area includes the area to be regulated must be formed or an existing city planning board must be increased to include two representatives from the unincorporated area

which is to be affected. These representatives shall be appointed by the board of county commissioners. Such representation, however, shall cease when the county board adopts a master plan pursuant to chapter 1 and accompanying zoning or subdivision resolutions, or both, which include the area.

History: En. Sec. 2, Ch. 136, L. 1929; re-en. Sec. 5305.2, R.C.M. 1935; amd. Sec. 1, Ch. 273, L. 1971; amd. Sec. 1, Ch. 354, L. 1973; R.C.M. 1947, 11-2702(part).

76-2-312. Exclusion for commission-manager plan municipalities. A city or town which has as its plan of government the commission-managerplan shall be excluded from the provisions of 76-2-310 and 76-2-311 which define extraterritorial authority to review proposed subdivisions.

History: En. Sec. 2, Ch. 136, L. 1929; re-en. Sec. 5305.2, R.C.M. 1935; amd. Sec. 1, Ch. 273, L. 1971; amd. Sec. 1, Ch. 354, L. 1973; R.C.M. 1947, 11-2702(part).

76-2-313. Renumbered 76-2-411 by Code Commissioner, 1983.

76-2-314. Renumbered 76-2-412 by Code Commissioner, 1983.

76-2-315. Violations and penalties. (1) A violation of this part or of such ordinance or regulation made pursuant to 76-2-308(1) is a misdemeanor, and such city or town council or other legislative body may provide for the punishment thereof by fine or imprisonment or both.

(2) It is also empowered to provide civil penalties for such violation.

History: En. Sec. 8, Ch. 136, L. 1929; re-en. Sec. 5305.8, R.C.M. 1935; R.C.M. 1947, 11-2708(part); amd. Sec. 9, Ch. 266, L. 1979.

76-2-316 through 76-2-320 reserved.

76-2-321. Board of adjustment. (1) Such city or town council or other legislative body may provide for the appointment of a board of adjustment and in the regulations and restrictions adopted pursuant to the authority of this part may provide that the board of adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance in harmony with its general purposes and intent and in accordance with the general or specific rules therein contained.

(2) An ordinance adopted pursuant to this section providing for a board of adjustment may restrict the authority of the board and provide that the city or town council or other legislative body reserves to itself the

power to make certain exceptions to regulations, ordinances, or land use plans adopted pursuant to this part.

(3) The board shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to this part. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Such chairman or in his absence the acting chairman may administer oaths and compel the attendance of witnesses.

History: En. Sec. 7, Ch. 136, L. 1929; re-en. Sec. 5305.7, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1975; R.C.M. 1947, 11-2707(part).

76-2-322. Membership and term of board members — vacancies. (1) The board of adjustment shall consist of not less than five or more than seven members to be appointed for a term to be specified by the city or town council or other legislative body or, if no term is specified, then for a term of 3 years. A member is removable for cause by the appointing authority upon written charges and after public hearing.

(2) Vacancies shall be filled for the unexpired term of any member whose term becomes vacant.

History: En. Sec. 7, Ch. 136, L. 1929; re-en. Sec. 5305.7, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1975; R.C.M. 1947, 11-2707(1); amd. Sec. 1, Ch. 67, L. 1985; amd. Sec. 1, Ch. 110, L. 1987.

76-2-323. Powers of board of adjustment. (1) The board of adjustment shall have the following powers:

(a) to hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this part or of any ordinance adopted pursuant thereto;

(b) to hear and decide special exceptions to the terms of the ordinance upon which such board is required to pass under such ordinance;

(c) to authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship and so that the spirit of the ordinance shall be observed and substantial justice done.

(2) In exercising the above-mentioned powers, such board may, in conformity with the provisions of this part, reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made and to that end shall have all the powers of the officer from whom the appeal is taken.

History: En. Sec. 7, Ch. 136, L. 1929; re-en. Sec. 5305.7, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1975; R.C.M. 1947, 11-2707(5), (6).

Cross-References

Application of Montana Rules of Civil Procedure to this section, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

76-2-324. Vote needed for board action. The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official; to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance; or to effect any variation in such ordinance.

History: En. Sec. 7, Ch. 136, L. 1929; re-en. Sec. 5305.7, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1975; R.C.M. 1947, 11-2707(7).

76-2-325. Public access to board activities. (1) All meetings of the board shall be open to the public.

(2) The board shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

History: En. Sec. 7, Ch. 136, L. 1929; re-en. Sec. 5305.7, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1975; R.C.M. 1947, 11-2707(part).

Cross-References

Right of public participation, Art. II, sec. 8, Mont. Const.; Title 2, ch. 3, part 1.

Open meeting law, Art. II, sec. 9, Mont. Const.; Title 2, ch. 3, part 2.

76-2-326. Appeals to board of adjustment. (1) Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof.

(2) The officer from whom the appeal is taken shall forthwith transmit to the board all papers constituting the record upon which the action appealed was taken.

(3) An appeal stays all proceedings in furtherance of the action appealed from unless the officer from whom the appeal is taken certifies to the board of adjustment after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the board of adjustment or by a court of record

on application, on notice to the officer from whom the appeal is taken, and on due cause shown.

(4) The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof as well as due notice to the parties in interest, and decide the same within a reasonable time.

(5) Upon the hearing any party may appear in person or by attorney.

History: En. Sec. 7, Ch. 136, L. 1929; re-en. Sec. 5305.7, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1975; R.C.M. 1947, 11-2707(3), (4).

Cross-References

Application of Montana Rules of Civil Procedure, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

76-2-327. Appeals from board to court of record. (1) Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment or any taxpayer or any officer, department, board, or bureau of the municipality may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within 30 days after the filing of the decision in the office of the board.

(2) Upon the presentation of such petition, the court may allow a writ of certiorari directed to the board of adjustment to review such decision of the board of adjustment and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than 10 days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may (on application, on notice to the board, and on due cause shown) grant a restraining order. The board of adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

(3) If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made.

(4) The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

History: En. Sec. 7, Ch. 136, L. 1929; re-en. Sec. 5305.7, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1975; R.C.M. 1947, 11-2707(8) thru (11).

Cross-References

Application of Montana Rules of Civil Procedure, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

76-2-328. Awarding of costs upon appeal from board decision. Costs shall not be allowed against the board unless it shall appear to the court that it acted with gross negligence, in bad faith, or with malice in making the decision appealed from.

History: En. Sec. 7, Ch. 136, L. 1929; re-en. Sec. 5305.7, R.C.M. 1935; amd. Sec. 1, Ch. 13, L. 1975; R.C.M. 1947, 11-2707(12).

Part 4

Application to Governmental Agencies Group and Foster Homes

76-2-401. Definitions. As used in 76-2-402, the following definitions apply:

(1) "Agency" means a board, bureau, commission, department, an authority, or other entity of state or local government.

(2) "Local zoning regulations" means zoning regulations adopted pursuant to Title 76, chapter 2.

History: En. Sec. 1, Ch. 397, L. 1981.

76-2-402. Local zoning regulations – application to agencies. Whenever an agency proposes to use public land contrary to local zoning regulations, a public hearing, as defined below, shall be held.

(1) The local board of adjustments, as provided in this chapter, shall hold a hearing within 30 days of the date the agency gives notice to the board of its intent to develop land contrary to local zoning regulations.

(2) The board shall have no power to deny the proposed use but shall act only to allow a public forum for comment on the proposed use.

History: En. Sec. 2, Ch. 397, L. 1981.

76-2-403 through 76-2-410 reserved.

76-2-411. Definition of community residential facility. "Community residential facility" means:

(1) a community group home for developmentally, mentally, or severely disabled persons which does not provide skilled or intermediate

nursing care;

(2) a youth foster home or youth group home as defined in 41-3-1102;

(3) a halfway house operated in accordance with regulations of the department of public health and human services for the rehabilitation of alcoholics or drug dependent persons; or

(4) a licensed adult foster family care home.

History: En. Sec. 1, Ch. 350, L. 1973; amd. Sec. 1, Ch. 129, L. 1974; amd. Sec. 6, Ch. 364, L. 1975; R.C.M. 1947, 11-2702.1; MCA 1981, 76-2-313; redes. 76-2-411 by Code Commissioner, 1983; amd. Sec. 28, Ch. 465, L. 1983; amd. Sec. 1, Ch. 309, L. 1985; amd. Sec. 9, Ch. 514, L. 1987; amd. Sec. 236, Ch. 418, L. 1995; amd. Sec. 545, Ch. 546, L. 1995.

76-2-412. Relationship of foster homes, youth group homes, community residential facilities, and day-care homes to zoning. (1) A foster or youth group home operated under the provisions of 41-3-1141 through 41-3-1143 or a community residential facility serving 8 or fewer persons is considered a residential use of property for purposes of zoning if the home provides care on a 24-hour-a-day basis.

(2) A family day-care home or a group day-care home registered by the department of public health and human services under Title 52, chapter 2, part 7, is considered a residential use of property for purposes of zoning.

(3) The facilities listed in subsections (1) and (2) are a permitted use in all residential zones, including but not limited to residential zones for single-family dwellings. Any safety or sanitary regulation of the department of public health and human services or any other agency of the state or a political subdivision of the state that is not applicable to residential occupancies in general may not be applied to a community residential facility serving 8 or fewer persons or to a day-care home serving 12 or fewer children.

(4) This section may not be construed to prohibit a city or county from requiring a conditional use permit in order to maintain a home pursuant to the provisions of subsection (1) if the home is licensed by the department of public health and human services. A city or county may not require a conditional use permit in order to maintain a day-care home registered by the department of public health and human services.

History: En. Sec. 2, Ch. 350, L. 1973; amd. Sec. 2, Ch. 129, L. 1974; R.C.M. 1947, 11-2702.2; MCA 1981, 76-2-314; redes. 76-2-412 by Code Commissioner, 1983; amd. Sec. 29, Ch. 465, L. 1983; amd. Sec. 1, Ch. 181, L. 1987; amd. Sec. 237, Ch. 418, L. 1995; amd. Sec. 546, Ch. 546, L. 1995.

CHAPTER 3

TITLE 76
LOCAL REGULATION OF SUBDIVISIONS

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Municipal subdivisions required to conform to subdivision laws, 7-3-4445.

Duty to notify weed management district when proposed project will disturb land, 7-22-2152.

Conservation easements preventing subdivision of land, 76-6-203.

Water use -- ground water, Title 85, ch. 2, part 5.

Part 1
General Provisions

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Conservation easements preventing subdivision of land, 76-6-203.

76-3-101. Short title. This chapter may be cited as the "Montana Subdivision and Platting Act".

History: En. Sec. 1, Ch. 500, L. 1973; R.C.M. 1947, 11-3859.

76-3-102. Statement of purpose. It is the purpose of this chapter to:

(1) promote the public health, safety, and general welfare by regulating the subdivision of land;

(2) prevent overcrowding of land;

(3) lessen congestion in the streets and highways;

(4) provide for adequate light, air, water supply, sewage disposal, parks and recreation areas, ingress and egress, and other public requirements;

(5) require development in harmony with the natural environment;

(6) protect the rights of property owners; and

(7) require uniform monumentation of land subdivisions and transferring interests in real property by reference to a plat or certificate of survey.

History: En. Sec. 2, Ch. 500, L. 1973; amd. Sec. 1, Ch. 498, L. 1975; amd. Sec. 1, Ch. 552, L. 1977; R.C.M. 1947, 11-3860; amd. Sec. 1, Ch. 272, L. 1993; amd. Sec. 2, Ch. 468, L. 1995.

76-3-103. Definitions. As used in this chapter, unless the context or subject matter clearly requires otherwise, the following definitions apply:

(1) "Certificate of survey" means a drawing of a field survey prepared by a registered surveyor for the purpose of disclosing facts pertaining to boundary locations.

(2) "Dedication" means the deliberate appropriation of land by an owner for any general and public use, reserving to the landowner no rights that are incompatible with the full exercise and enjoyment of the public use to which the property has been devoted.

(3) "Division of land" means the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring or contracting to transfer title to or possession of a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to this

chapter. The conveyance of a tract of record or an entire parcel of land that was created by a previous division of land is not a division of land.

(4) "Examining land surveyor" means a registered land surveyor appointed by the governing body to review surveys and plats submitted for filing.

(5) "Final plat" means the final drawing of the subdivision and dedication required by this chapter to be prepared for filing for record with the county clerk and recorder and containing all elements and requirements set forth in this chapter and in regulations adopted pursuant to this chapter.

(6) "Governing body" means a board of county commissioners or the governing authority of a city or town organized pursuant to law.

(7) "Immediate family" means a spouse, children by blood or adoption, and parents.

(8) "Irregularly shaped tract of land" means a parcel of land other than an aliquot part of the United States government survey section or a United States government lot, the boundaries or areas of which cannot be determined without a survey or trigonometric calculation.

(9) "Planned unit development" means a land development project consisting of residential clusters, industrial parks, shopping centers, or office building parks that compose a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership or use.

(10) "Plat" means a graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, alleys, and other divisions and dedications.

(11) "Preliminary plat" means a neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision that furnish a basis for review by a governing body.

(12) "Registered land surveyor" means a person licensed in conformance with Title 37, chapter 67, to practice surveying in the state of Montana.

(13) "Registered professional engineer" means a person licensed in conformance with Title 37, chapter 67, to practice engineering in the state of Montana.

(14) "Subdivider" means a person who causes land to be subdivided or who proposes a subdivision of land.

(15) "Subdivision" means a division of land or land so divided that it creates one or more parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise

conveyed and includes any resubdivision and further includes a condominium or area, regardless of its size, that provides or will provide multiple space for recreational camping vehicles or mobile homes.

(16) (a) "Tract of record" means an individual parcel of land, irrespective of ownership, that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder's office.

(b) Each individual tract of record continues to be an individual parcel of land unless the owner of the parcel has joined it with other contiguous parcels by filing with the county clerk and recorder:

(i) an instrument of conveyance in which the aggregated parcels have been assigned a legal description that describes the resulting single parcel and in which the owner expressly declares the owner's intention that the tracts be merged; or

(ii) a certificate of survey or subdivision plat that shows that the boundaries of the original parcels have been expunged and depicts the boundaries of the larger aggregate parcel.

(c) An instrument of conveyance does not merge parcels of land under subsection (16)(b)(i) unless the instrument states, "This instrument is intended to merge individual parcels of land to form the aggregate parcel(s) described in this instrument" or a similar statement, in addition to the legal description of the aggregate parcels, clearly expressing the owner's intent to effect a merger of parcels.

History: En. Sec. 3, Ch. 500, L. 1973; amd. Sec. 1, Ch. 334, L. 1974; amd. Sec. 2, Ch. 498, L. 1975; R.C.M. 1947, 11-3861(part); amd. Sec. 140, Ch. 370, L. 1987; amd. Sec. 2, Ch. 272, L. 1993; amd. Sec. 1, Ch. 503, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 503 in definition of division of land inserted second sentence concerning exclusions from definition; inserted definition of immediate family; in definition of tract of record, before "parcel of land", inserted "an individual" and inserted (b) and (c) concerning individual tract of record and instrument of conveyance; and made minor changes in style. Amendment effective May 1, 1997.

Effective Date – Retroactive Applicability: Section 5, Ch. 503, L. 1997, provided: "[This act] [76-3-103, 76-3-201, and 76-3-507] is effective on passage and approval [approved May 1, 1997], and [section 1] [76-3-103] applies retroactively, within the meaning of 1-2-109, to tracts filed before [the effective date of this act]." Effective May 1, 1997.

76-3-104. What constitutes subdivision. A subdivision comprises only those parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section when the parcels have been segregated from the original tract. The subdivision plat must show all the parcels whether contiguous or not.

History: En. Sec. 3, Ch. 500, L. 1973; amd. Sec. 1, Ch. 334, L. 1974; amd. Sec. 2, Ch. 498, L. 1975; R.C.M. 1947, 11-3861(part); amd. Sec. 3, Ch. 272, L. 1993.

76-3-105. Violations. Any person who violates any provision of this chapter or any local regulations adopted pursuant thereto shall be guilty of a misdemeanor and punishable by a fine of not less than $100 or more than $500 or by imprisonment in a county jail for not more than 3 months or by both fine and imprisonment. Each sale, lease, or transfer of each separate parcel of land in violation of any provision of this chapter or any local regulation adopted pursuant thereto shall be deemed a separate and distinct offense.

History: En. Sec. 18, Ch. 500, L. 1973; amd. Sec. 2, Ch. 553, L. 1977; R.C.M. 1947, 11-3876.

Part 2
Miscellaneous Exemptions

Part Cross-References

County taxation, Title 7, ch. 6, part 25.
Property tax levies, Title 15, ch. 10.
Unit Ownership Act, Title 70, ch. 23.

76-3-201. Exemption for certain divisions of land. (1) Unless the method of disposition is adopted for the purpose of evading this chapter, the requirements of this chapter may not apply to any division of land that:

(a) is created by order of any court of record in this state or by operation of law or that, in the absence of agreement between the parties to the sale, could be created by an order of any court in this state pursuant to the law of eminent domain, Title 70, chapter 30;

(b) is created to provide security for construction mortgages, liens, or trust indentures;

(c) creates an interest in oil, gas, minerals, or water that is severed from the surface ownership of real property;

(d) creates cemetery lots;

(e) is created by the reservation of a life estate;

(f) is created by lease or rental for farming and agricultural purposes.

(2) Before a court of record orders a division of land under subsection (1)(a), the court shall notify the governing body of the pending division and allow the governing body to present written comment on the division.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(9);

amd. Sec. 2, Ch. 503, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 503 inserted (2) concerning notice to governing body in case of division of land under subsection (1)(a); and made minor changes in style. Amendment effective May 1, 1997.

76-3-202. Exemption for structures on complying subdivided lands. Where required by this chapter, when the land upon which an improvement is situated has been subdivided in compliance with this chapter, the sale, rent, lease, or other conveyance of one or more parts of a building, structure, or other improvement situated on one or more parcels of land is not a division of land and is not subject to the terms of this chapter.

History: En. Sec. 3, Ch. 500, L. 1973; amd. Sec. 1, Ch. 334, L. 1974; amd. Sec. 2, Ch. 498, L. 1975; R.C.M. 1947, 11-3861(part); amd. Sec. 10, Ch. 266, L. 1979.

76-3-203. Exemption for certain condominiums. Condominiums constructed on land divided in compliance with this chapter are exempt from the provisions of this chapter.

History: En. Sec. 3, Ch. 500, L. 1973; amd. Sec. 1, Ch. 334, L. 1974; amd. Sec. 2, Ch. 498, L. 1975; R.C.M. 1947, 11-3861(part).

76-3-204. Exemption for conveyances of one or more parts of a structure or improvement. The sale, rent, lease, or other conveyance of one or more parts of a building, structure, or other improvement, whether existing or proposed, is not a division of land, as that term is defined in this chapter, and is not subject to the requirements of this chapter.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(10); amd. Sec. 1, Ch. 500, L. 1985.

76-3-205. Exemption for state-owned lands – exception. The provisions of this chapter shall not apply to the division of state-owned land unless the division creates a second or subsequent parcel from a single tract for sale, rent, or lease for residential purposes after July 1, 1974.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(5).

76-3-206. Exemption for conveyances executed prior to July 1, 1974. This chapter shall not be applicable to deeds, contracts, leases, or other conveyances executed prior to July 1, 1974.

History: En. Sec. 12, Ch. 500, L. 1973; amd. Sec. 8, Ch. 334, L. 1974; R.C.M.

1947, 11-3870(part).

76-3-207. Subdivisions exempted from review but subject to survey requirements – exceptions. (1) Except as provided in subsection (2), unless the method of disposition is adopted for the purpose of evading this chapter, the following divisions of land are not subdivisions under this chapter but are subject to the surveying requirements of 76-3-401 for divisions of land not amounting to subdivisions:

(a) divisions made outside of platted subdivisions for the purpose of relocating common boundary lines between adjoining properties;

(b) divisions made outside of platted subdivisions for the purpose of a single gift or sale in each county to each member of the landowner's immediate family;

(c) divisions made outside of platted subdivisions by gift, sale, or agreement to buy and sell in which the parties to the transaction enter a covenant running with the land and revocable only by mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes;

(d) for five or fewer lots within a platted subdivision, relocation of common boundaries and the aggregation of lots; and

(e) divisions made for the purpose of relocating a common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.

(2) Notwithstanding the provisions of subsection (1):

(a) within a platted subdivision filed with the county clerk and recorder, a division of lots that results in an increase in the number of lots or which redesigns or rearranges six or more lots must be reviewed and approved by the governing body and an amended plat must be filed with the county clerk and recorder;

(b) a change in use of the land exempted under subsection (1)(c) for anything other than agricultural purposes subjects the division to the provisions of this chapter.

(3) A division of land may not be made under this section unless the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be divided have been paid.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(6); amd. Sec. 1, Ch. 379, L. 1985; amd. Sec. 1, Ch. 569, L. 1989; amd. Sec. 4, Ch. 272, L. 1993; amd. Sec. 3, Ch. 366, L. 1993; amd. Sec. 3, Ch. 468, L. 1995.

76-3-208. Subdivisions exempted from surveying and filing requirements but subject to review provisions. Subdivisions created by rent or lease are exempt from the surveying and filing requirements of this chapter but must be submitted for review and approved by the governing body before portions thereof may be rented or leased.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(7).

76-3-209. Exemption from surveying and platting requirements for lands acquired for state highways. Instruments of transfer of land which is acquired for state highways may refer by parcel and project number to state highway plans which have been recorded in compliance with 60-2-209 and are exempted from the surveying and platting requirements of this chapter. If such parcels are not shown on highway plans of record, instruments of transfer of such parcels shall be accompanied by and refer to appropriate certificates of survey and plats when presented for recording.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(4).

76-3-210. Subdivisions exempted from requirement of an environmental assessment. (1) Subdivisions totally within a master planning area adopted pursuant to chapter 1 wherein zoning regulations pursuant to part 3 of chapter 2 or 76-2-201 and a long-range development program of public works projects pursuant to 76-1-601 have been adopted are deemed to be in the public interest and exempt from the requirement of an environmental assessment.

(2) (a) When a subdivision is proposed in an area for which a master plan has been adopted pursuant to chapter 1 and the proposed subdivision will be in compliance with the plan or when the subdivision will contain fewer than 10 parcels and less than 20 acres, a planning board established pursuant to chapter 1 and having jurisdiction over the area involved may exempt the subdivider from the completion of all or any portion of the environmental assessment.

(b) When such an exemption is granted, the planning board shall prepare and certify a written statement of the reasons for granting the exemption. A copy of this statement shall accompany the preliminary plat of the subdivision when it is submitted for review.

(c) Where no properly established planning board having jurisdiction exists, the governing body may grant exemptions as specified in this subsection (2).

History: (1)En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; Sec. 11-3862, R.C.M. 1947; (2)En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213,

L. 1975; Sec. 11-3863, R.C.M. 1947; R.C.M. 1947, 11-3862(8), 11-3863(3.1).

Part 3
Land Transfers

Part Cross-References

County taxation, Title 7, ch. 6, part 25.
Property tax levies, Title 15, ch. 10.

76-3-301. General restriction on transfer of title to subdivided lands. (1) Except as provided in 76-3-303, every final subdivision plat must be filed for record with the county clerk and recorder before title to the subdivided land can be sold or transferred in any manner. The clerk and recorder of the county shall refuse to accept any plat for record that fails to have the approval of 76-3-611(1) in proper form.

(2) The clerk and recorder shall notify the governing body or its designated agent of any land division described in 76-3-207(1).

(3) If transfers not in accordance with this chapter are made, the county attorney shall commence action to enjoin further sales or transfers and compel compliance with all provisions of this chapter. The cost of such action shall be imposed against the party not prevailing.

History: En. Sec. 9, Ch. 500, L. 1973; amd. Sec. 7, Ch. 334, L. 1974; amd. Sec. 1, Ch. 553, L. 1977; R.C.M. 1947, 11-3867(part); amd. Sec. 1, Ch. 633, L. 1979.

76-3-302. Restrictions on recording instruments relating to land subject to surveying requirements. (1) Except as provided in subsection (2), the county clerk and recorder of any county may not record any instrument which purports to transfer title to or possession of a parcel or tract of land which is required to be surveyed by this chapter unless the required certificate of survey or subdivision plat has been filed with the clerk and recorder and the instrument of transfer describes the parcel or tract by reference to the filed certificate or plat.

(2) Subsection (1) does not apply when the parcel or tract to be transferred was created before July 1, 1973, and the instrument of transfer for the parcel or tract includes a reference to a previously recorded instrument of transfer or is accompanied by documents which, if recorded, would otherwise satisfy the requirements of this subsection. The reference or document must demonstrate that the parcel or tract existed before July 1, 1973.

(3) The reference or documents required in subsection (2) do not constitute a legal description of the property and may not be substituted for a legal description of the property.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(3); amd. Sec. 1, Ch. 268, L. 1987.

76-3-303. Contract for deed permitted if buyer protected. Notwithstanding the provisions of 76-3-301, after the preliminary plat of a subdivision has been approved or conditionally approved, the subdivider may enter into contracts to sell lots in the proposed subdivision if all of the following conditions are met:

(1) that under the terms of the contracts the purchasers of lots in the proposed subdivision make any payments to an escrow agent which must be a bank or savings and loan association chartered to do business in the state of Montana;

(2) that under the terms of the contracts and the escrow agreement the payments made by purchasers of lots in the proposed subdivision may not be distributed by the escrow agent to the subdivider until the final plat of the subdivision is filed with the county clerk and recorder;

(3) that the contracts and the escrow agreement provide that if the final plat of the proposed subdivision is not filed with the county clerk and recorder within 2 years of the preliminary plat approval, the escrow agent shall immediately refund to each purchaser any payments he has made under the contract;

(4) that the county treasurer has certified that no real property taxes assessed and levied on the land to be divided are delinquent; and

(5) that the contracts contain the following language conspicuously set out therein: "The real property which is the subject hereof has not been finally platted, and until a final plat identifying the property has been filed with the county clerk and recorder, title to the property cannot be transferred in any manner.".

History: En. Sec. 9, Ch. 500, L. 1973; amd. Sec. 7, Ch. 334, L. 1974; amd. Sec. 1, Ch. 553, L. 1977; R.C.M. 1947, 11-3867(4); amd. Sec. 2, Ch. 379, L. 1985.

76-3-304. Effect of recording complying plat. The recording of any plat made in compliance with the provisions of this chapter shall serve to establish the identity of all lands shown on and being a part of such plat. Where lands are conveyed by reference to a plat, the plat itself or any copy of the plat properly certified by the county clerk and recorder as being a true copy thereof shall be regarded as incorporated into the instrument of conveyance and shall be received in evidence in all courts of this state.

History: En. Sec. 12, Ch. 500, L. 1973; amd. Sec. 8, Ch. 334, L. 1974; R.C.M. 1947, 11-3870(3).

76-3-305. Vacation of plats – utility easements. (1) Any plat prepared and recorded as provided in this part may be vacated either in whole or in part as provided by 7-5-2501, 7-5-2502, 7-14-2616(1) and (2), 7-14-2617, 7-14-4114(1) and (2), and 7-14-4115. Upon vacation, the governing body or the district court, as provided in 7-5-2502, shall determine to which properties the title to the streets and alleys of the vacated portions must revert. The governing body or the district court, as provided in 7-5-2502, shall take into consideration the previous platting; the manner in which the right-of-way was originally dedicated, granted, or conveyed; the reasons stated in the petition requesting the vacation; the parties requesting the vacation; and any agreements between the adjacent property owners regarding the use of the vacated area. The title to the streets and alleys of the vacated portions may revert to one or more of the owners of the properties within the platted area adjacent to the vacated portions.

(2) However, when any poleline, pipeline, or any other public or private facility is located in a vacated street or alley at the time of the reversion of the title to the vacated street or alley, the owner of the public or private utility facility has an easement over the vacated land to continue the operation and maintenance of the public utility facility.

History: En. Sec. 12, Ch. 500, L. 1973; amd. Sec. 8, Ch. 334, L. 1974; R.C.M. 1947, 11-3870(1); amd. Sec. 1, Ch. 100, L. 1995; amd. Sec. 277, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 in (1), in first sentence, substituted "provided in this part" for "provided in this section". Amendment effective March 12, 1997.

76-3-306. Covenants run with the land. All covenants shall be considered to run with the land, whether marked or noted on the subdivision plat or contained in a separate instrument recorded with the plat.

History: En. Sec. 11, Ch. 500, L. 1973; R.C.M. 1947, 11-3869.

Cross-References

Covenants running with land, Title 70, ch. 17, part 2.

76-3-307. Donations or grants to public considered a grant to donee. Every donation or grant to the public or to any person, society, or corporation marked or noted on a plat is to be considered a grant to the donee.

History: En. Sec. 13, Ch. 500, L. 1973; R.C.M. 1947, 11-3871.

Part 4
Survey Requirements

Part Cross-References

Board of Professional Engineers and Professional Land Surveyors -- licensing, Title 37, ch. 67.

76-3-401. Survey requirements for lands other than subdivisions. All divisions of land for sale other than a subdivision after July 1, 1974, into parcels which cannot be described as 1/32 or larger aliquot parts of a United States government section or a United States government lot must be surveyed by or under the supervision of a registered land surveyor. Surveys required under this section must comply with the requirements of 76-3-406.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(1); amd. Sec. 2, Ch. 136, L. 1993.

76-3-402. Survey and platting requirements for subdivided lands. (1) Every subdivision of land after June 30, 1973, must be surveyed and platted in conformance with this chapter, including the requirements of 76-3-406, by or under the supervision of a registered land surveyor.

(2) Subdivision plats must be prepared and filed in accordance with this chapter and regulations adopted pursuant to this chapter.

(3) All division of sections into aliquot parts and retracement of lines must conform to United States bureau of land management instructions, and all public land survey corners must be filed in accordance with Corner Recordation Act of Montana (Title 70, chapter 22, part 1). Engineering plans, specifications, and reports required in connection with public improvements and other elements of the subdivision required by the governing body must be prepared and filed by a registered engineer or a registered land surveyor, as their respective licensing laws allow, in accordance with this chapter and regulations adopted pursuant to this chapter.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(2); amd. Sec. 3, Ch. 136, L. 1993.

76-3-403. Monumentation. (1) The department of commerce shall, in conformance with the Montana Administrative Procedure Act, prescribe uniform standards for monumentation and for the form, accuracy, and descriptive content of records of survey.

(2) It shall be the responsibility of the governing body to require

the replacement of all monuments removed in the course of construction.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977; R.C.M. 1947, 11-3862(11), (12); amd. Sec. 6, Ch. 274, L. 1981.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

76-3-404. Certificate of survey. (1) Within 180 days of the completion of a survey, the registered land surveyor responsible for the survey, whether he is privately or publicly employed, shall prepare and submit for filing a certificate of survey in the county in which the survey was made if the survey:

(a) provides material evidence not appearing on any map filed with the county clerk and recorder or contained in the records of the United States bureau of land management;

(b) reveals a material discrepancy in such map;

(c) discloses evidence to suggest alternate locations of lines or points;

(d) establishes one or more lines not shown on a recorded map, the positions of which are not ascertainable from an inspection of such map without trigonometric calculations.

(2) A certificate of survey will not be required for any survey which is made by the United States bureau of land management or which is preliminary or which will become part of a subdivision plat being prepared for recording under the provisions of this chapter.

(3) Certificates of survey shall be legibly drawn, printed, or reproduced by a process guaranteeing a permanent record and shall conform to monumentation and surveying requirements promulgated under this chapter.

History: En. Sec. 14, Ch. 500, L. 1973; R.C.M. 1947, 11-3872; amd. Sec. 2, Ch. 633, L. 1979.

76-3-405. Administration of oaths by registered land surveyor.(1) Every registered land surveyor may administer and certify oaths when:

(a) it becomes necessary to take testimony for the identification of old corners or reestablishment of lost or obliterated corners;

(b) a corner or monument is found in a deteriorating condition and it is desirable that evidence concerning it be perpetuated;

(c) the importance of the survey makes it desirable to administer an oath to his assistants for the faithful performance of their duty.

(2) A record of oaths shall be preserved as part of the field notes of the survey and noted on the certificate of survey filed under 76-3-404.

History: En. Sec. 17, Ch. 500, L. 1973; R.C.M. 1947, 11-3875; amd. Sec. 11, Ch. 266, L. 1979.

76-3-406. Surveys affecting irrigation districts – additional survey requirements. (1) (a) A surveyor who completes a survey identified in subsection (2) that establishes or defines a section line and creates a parcel that crosses the established or defined section line so that an irrigation district assessment boundary is included in more than 1 section shall note on the survey the acreage of the farm unit or created parcel in each section.

(b) The surveyor shall notify the appropriate irrigation district of the existence of the survey and the purpose of the survey.

(2) The requirements of subsection (1) apply only to surveys for which the surveyor determines that, based on available public records, the survey involves land:

(a) traversed by a canal or ditch owned by an irrigation district; or

(b) included in an irrigation district.

(3) For purposes of this section, "irrigation district" means a district established pursuant to Title 85, chapter 7.

History: En. Sec. 1, Ch. 136, L. 1993.

Part 5
Local Regulations

76-3-501. Local subdivision regulations. (1) Before July 1, 1974, the governing body of every county, city, and town shall adopt and provide for the enforcement and administration of subdivision regulations reasonably providing for the orderly development of their jurisdictional areas; for the coordination of roads within subdivided land with other roads, both existing and planned; for the dedication of land for roadways and for public utility easements; for the improvement of roads; for the provision of adequate open spaces for travel, light, air, and recreation; for the provision of adequate transportation, water, and drainage; subject to the provisions of 76-3-511, for the regulation of sanitary facilities; for the avoidance or minimization of congestion; and for the avoidance of subdivision which would involve unnecessary environmental degradation and the avoidance of danger of injury to health, safety, or welfare by reason of natural hazard or the lack of water, drainage, access, transportation, or other public services or would necessitate an excessive expenditure of public funds for the supply of such services.

(2) Review and approval or disapproval of a subdivision under this chapter may occur only under those regulations in effect at the time an

application for approval of a preliminary plat or for an extension under 76-3-610 is submitted to the governing body.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(part); amd. Sec. 1, Ch. 378, L. 1985; amd. Sec. 17, Ch. 471, L. 1995.

76-3-502. Repealed. Sec. 4, Ch. 236, L. 1981.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(part); amd. Sec. 6, Ch. 274, L. 1981.

76-3-503. Hearing on proposed regulations. Before the governing body adopts subdivision regulations pursuant to 76-3-501, it shall hold a public hearing thereon and shall give public notice of its intent to adopt such regulations and of the public hearing by publication of notice of the time and place of the hearing in a newspaper of general circulation in the county not less than 15 or more than 30 days prior to the date of the hearing.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(part).

76-3-504. Minimum requirements for subdivision regulations. The subdivision regulations adopted under this chapter shall, at a minimum:

(1) require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;

(2) establish procedures consistent with this chapter for the submission and review of subdivision plats;

(3) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

(4) provide for the identification of areas that, because of natural or human-caused hazards, are unsuitable for subdivision development and prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques;

(5) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

(6) prescribe standards for:

(a) the design and arrangement of lots, streets, and roads;

(b) grading and drainage;

(c) subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal that, at a minimum, meet the regulations adopted by the department of environmental quality under 76-4-104;

(d) the location and installation of utilities;

(7) provide procedures for the administration of the park and open-space requirements of this chapter;

(8) provide for the review of preliminary plats by affected public utilities and those agencies of local, state, and federal government having a substantial interest in a proposed subdivision. A utility or agency review may not delay the governing body's action on the plat beyond the time limits specified in this chapter, and the failure of any agency to complete a review of a plat may not be a basis for rejection of the plat by the governing body.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(2), (3); amd. Sec. 1, Ch. 236, L. 1981; amd. Sec. 17, Ch. 274, L. 1981; amd. Sec. 238, Ch. 418, L. 1995; amd. Sec. 18, Ch. 471, L. 1995.

76-3-505. Provision for summary review of subdivisions. Local subdivision regulations must include procedures for the summary review and approval of subdivision plats containing five or fewer parcels when proper access to all lots is provided, when no land in the subdivision will be dedicated to public use for parks or playgrounds, and when the plats have been approved by the department of environmental quality whenever approval is required by part 1 of chapter 4; however, reasonable local regulations may contain additional requirements for summary approval.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(5); amd. Sec. 1, Ch. 579, L. 1985; amd. Sec. 1, Ch. 256, L. 1987; amd. Sec. 239, Ch. 418, L. 1995.

76-3-506. Provision for granting variances. Subdivision regulations may authorize the governing body to grant variances from the regulations when strict compliance will result in undue hardship and when it is not essential to the public welfare. Any variance granted pursuant to this section must be based on specific variance criteria contained in the subdivision regulations.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(6).

76-3-507. Provision for bonding requirements to ensure construction of public improvements. (1) Except as provided in subsection (2), the governing body shall require the subdivider to complete required improvements within the subdivision prior to the approval of the final plat.

(2) (a) In lieu of the completion of the construction of any public improvements prior to the approval of a final plat, the governing body shall at the subdivider's option allow the subdivider to provide or cause

to be provided a bond or other reasonable security, in an amount and with surety and conditions satisfactory to the governing body, providing for and securing the construction and installation of the improvements within a period specified by the governing body and expressed in the bonds or other security. The governing body shall reduce bond requirements commensurate with the completion of improvements.

(b) In lieu of requiring a bond or other means of security for the construction or installation of all the required public improvements under subsection (2)(a), the governing body may approve an incremental payment or guarantee plan. The improvements in a prior increment must be completed or the payment or guarantee of payment for the costs of the improvements incurred in a prior increment must be satisfied before development of future increments.

(3) Approval by the governing body of a final plat prior to the completion of required improvements and without the provision of the security required under subsection (2) is not an act of a legislative body for the purposes of 2-9-111.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(7); amd. Sec. 4, Ch. 468, L. 1995; amd. Sec. 3, Ch. 503, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 503 in (2)(a), in first sentence near beginning, inserted "the governing body shall at the subdivider's option allow"; and made minor changes in style. Amendment effective May 1, 1997.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

76-3-508. Repealed. Sec. 4, Ch. 236, L. 1981.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(8).

76-3-509 reserved.

76-3-510. Payment for extension of capital facilities. A local government may require a subdivider to pay or guarantee payment for part or all of the costs of extending capital facilities related to public health and safety, including but not limited to public roads, sewer lines, water supply lines, and storm drains to a subdivision. The costs must reasonably reflect the expected impacts directly attributable to the subdivision. A local government may not require a subdivider to pay or guarantee payment for part or all of the costs of constructing or extending capital facilities related to education.

History: En. Sec. 8, Ch. 468, L. 1995.

76-3-511. Local regulations no more stringent than state regulations or guidelines. (1) Except as provided in subsections (2) through (4) or unless required by state law, a governing body may not adopt a rule under 76-3-501 or 76-3-504(6)(c) that is more stringent than the comparable state regulations or guidelines that address the same circumstances. The governing body may incorporate by reference comparable state regulations or guidelines.

(2) The governing body may adopt a rule to implement 76-3-501 or 76-3-504(6)(c) that is more stringent than comparable state regulations or guidelines only if the governing body makes a written finding, after a public hearing and public comment and based on evidence in the record, that:

(a) the proposed local standard or requirement protects public health or the environment; and

(b) the local standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the governing body's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed local standard or requirement.

(4) (a) A person affected by a rule of the governing body adopted after January 1, 1990, and before April 14, 1995, that that person believes to be more stringent than comparable state regulations or guidelines may petition the governing body to review the rule. If the governing body determines that the rule is more stringent than comparable state regulations or guidelines, the governing body shall comply with this section by either revising the rule to conform to the state regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The governing body may charge a petition filing fee in an amount not to exceed $250.

(b) A person may also petition the governing body for a rule review under subsection (4)(a) if the governing body adopts a rule after January 1, 1990, in an area in which no state regulations or guidelines existed and the state government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted governing body rule.

History: En. Sec. 5, Ch. 471, L. 1995; amd. Sec. 278, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 at beginning of first sentence of (1) deleted "After April 14, 1995"; in (1), in first sentence, and in (2), near beginning, substituted "76-3-504(6)(c)" for "76-3-504(5)(c)"; and made minor changes in style. Amendment effective March 12, 1997.

Part 6
Local Review Procedure

76-3-601. Submission of preliminary plat for review. (1) Except when a plat is eligible for summary approval, the subdivider shall present to the governing body or to the agent or agency designated by the governing body the preliminary plat of the proposed subdivision for local review. The preliminary plat must show all pertinent features of the proposed subdivision and all proposed improvements.

(2) (a) When the proposed subdivision lies within the boundaries of an incorporated city or town, the preliminary plat must be submitted to and approved by the city or town governing body.

(b) When the proposed subdivision is situated entirely in an unincorporated area, the preliminary plat must be submitted to and approved by the governing body of the county. However, if the proposed subdivision lies within 1 mile of a third-class city or town or within 2 miles of a second-class city or within 3 miles of a first-class city, the county governing body shall submit the preliminary plat to the city or town governing body or its designated agent for review and comment. If the proposed subdivision is situated within a rural school district, as described in 20-9-615, the county governing body shall provide an informational copy of the preliminary plat to school district trustees.

(c) If the proposed subdivision lies partly within an incorporated city or town, the proposed plat must be submitted to and approved by both the city or town and the county governing bodies.

(d) When a proposed subdivision is also proposed to be annexed to a municipality, the governing body of the municipality shall coordinate the subdivision review and annexation procedures to minimize duplication of hearings, reports, and other requirements whenever possible.

(3) The provisions of 76-3-604, 76-3-605, and 76-3-608 through 76-3-610 and this section do not limit the authority of certain municipalities to regulate subdivisions beyond their corporate limits pursuant to 7-3-4444.

History: En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(part); amd. Sec. 1, Ch. 89, L. 1981; amd. Sec. 4, Ch. 506, L. 1995.

76-3-602. Fees. The governing body may establish reasonable fees to be paid by the subdivider to defray the expense of reviewing subdivision plats.

History: En. Sec. 10, Ch. 500, L. 1973; R.C.M. 1947, 11-3868.

76-3-603. Contents of environmental assessment. When required, the environmental assessment must accompany the preliminary plat and must include:

(1) for a major subdivision:

(a) a description of every body or stream of surface water that may be affected by the proposed subdivision, together with available ground water information, and a description of the topography, vegetation, and wildlife use within the area of the proposed subdivision;

(b) a summary of the probable impacts of the proposed subdivision based on the criteria described in 76-3-608; and

(c) a community impact report containing a statement of anticipated needs of the proposed subdivision for local services, including education and busing; roads and maintenance; water, sewage, and solid waste facilities; and fire and police protection; and

(d) additional relevant and reasonable information related to the applicable regulatory criteria adopted under 76-3-501 as may be required by the governing body;

(2) except as provided in 76-3-609(3), for a minor subdivision, a summary of the probable impacts of the proposed subdivision based on the criteria described in 76-3-608.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975; R.C.M. 1947, 11-3863(4); amd. Sec. 2, Ch. 236, L. 1981; amd. Sec. 5, Ch. 468, L. 1995.

76-3-604. Review of preliminary plat. (1) The governing body or its designated agent or agency shall review the preliminary plat to determine whether it conforms to the local master plan if one has been adopted pursuant to chapter 1, to the provisions of this chapter, and to rules prescribed or adopted pursuant to this chapter.

(2) The governing body shall approve, conditionally approve, or reject the preliminary plat within 60 days of its presentation unless the subdivider consents to an extension of the review period.

(3) If the governing body rejects or conditionally approves the preliminary plat, it shall forward one copy of the plat to the subdivider accompanied by a letter over the appropriate signature stating the reason for rejection or enumerating the conditions which must be met to assure approval of the final plat.

History: En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(part).

76-3-605. Hearing on preliminary plat. (1) The governing body or its authorized agent or agency shall hold a public hearing on the preliminary plat and shall consider all relevant evidence relating to the public health, safety, and welfare, including the environmental assessment, to determine whether the plat should be approved, conditionally approved, or disapproved by the governing body.

(2) When a proposed subdivision is also proposed to be annexed to a municipality, the governing body of the municipality shall hold joint hearings on the preliminary plat and annexation whenever possible.

(3) Notice of such hearing shall be given by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the hearing. The subdivider, each property owner of record, and each purchaser under contract for deed of property immediately adjoining the land included in the plat shall also be notified of the hearing by registered or certified mail not less than 15 days prior to the date of the hearing.

(4) When a hearing is held by an agent or agency designated by the governing body, the agent or agency shall act in an advisory capacity and recommend to the governing body the approval, conditional approval, or disapproval of the plat. This recommendation must be submitted to the governing body in writing not later than 10 days after the public hearing.

History: En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(part); amd. Sec. 2, Ch. 89, L. 1981; amd. Sec. 21, Ch. 526, L. 1983.

76-3-606. Repealed. Sec. 11, Ch. 468, L. 1995.

History: En. Sec. 6, Ch. 500, L. 1973; amd. Sec. 4, Ch. 334, L. 1974; R.C.M. 1947, 11-3864(1), (2); amd. Sec. 1, Ch. 703, L. 1979.

76-3-607. Repealed. Sec. 11, Ch. 468, L. 1995.

History: En. Sec. 6, Ch. 500, L. 1973; amd. Sec. 4, Ch. 334, L. 1974; R.C.M. 1947, 11-3864(3) thru (7).

76-3-608. Criteria for local government review. (1) The basis for the governing body's decision to approve, conditionally approve, or disapprove a subdivision is whether the preliminary plat, applicable environmental assessment, public hearing, planning board recommendations, or additional information demonstrates that development of the subdivision meets the requirements of this chapter. A governing body may not deny approval of a subdivision based solely on the subdivision's impacts on educational services.

(2) The governing body shall issue written findings of fact that weigh the criteria in subsection (3), as applicable.

(3) A subdivision proposal must undergo review for the following

primary criteria:

(a) the effect on agriculture, agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat, and public health and safety;

(b) compliance with:

(i) the survey requirements provided for in part 4 of this chapter;

(ii) the local subdivision regulations provided for in part 5 of this chapter; and

(iii) the local subdivision review procedure provided for in this part;

(c) the provision of easements for the location and installation of any planned utilities; and

(d) the provision of legal and physical access to each parcel within the subdivision and the required notation of that access on the applicable plat and any instrument of transfer concerning the parcel.

(4) The governing body may require the subdivider to design the subdivision to reasonably minimize potentially significant adverse impacts identified through the review required under subsection (3). The governing body shall issue written findings to justify the reasonable mitigation required under this subsection (4).

(5) (a) In reviewing a subdivision under subsection (3) and when requiring mitigation under subsection (4), a governing body may not unreasonably restrict a landowner's ability to develop land, but it is recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable and will preclude approval of the plat.

(b) When requiring mitigation under subsection (4), a governing body shall consult with the subdivider and shall give due weight and consideration to the expressed preference of the subdivider.

(6) (a) When a minor subdivision is proposed in an area where a master plan has been adopted pursuant to chapter 1 and the proposed subdivision will comply with the plan, the subdivision is exempt from the review criteria contained in subsection (3)(a) but is subject to applicable zoning regulations.

(b) In order for a master plan to serve as the basis for the exemption provided by this subsection (6), the plan must, at a minimum, contain:

(i) housing, transportation, and land-use elements sufficient for the governing body to protect public health, safety, and welfare; and

(ii) a discussion of physical constraints on development that exist within the area encompassed by the proposed subdivision.

History: En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(4); amd. Sec. 5, Ch. 272, L. 1993; amd. Sec. 6, Ch. 468, L. 1995.

76-3-609. Review procedure for minor subdivisions. Subdivisions containing five or fewer parcels in which proper access to all lots is provided and in which no land is to be dedicated to the public for parks or playgrounds are to be reviewed as follows:

(1) The governing body shall approve, conditionally approve, or disapprove the first minor subdivision from a tract of record within 35 days of the submission of the application.

(2) The governing body shall state in writing the conditions that must be met if the subdivision is conditionally approved or what local regulations would not be met by the subdivision if it disapproves the subdivision.

(3) The requirements for holding a public hearing and preparing an environmental assessment do not apply to the first minor subdivision created from a tract of record.

(4) Subsequent subdivisions from a tract of record must be reviewed under 76-3-505 and regulations adopted pursuant to that section.

History: En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(6); amd. Sec. 2, Ch. 579, L. 1985; amd. Sec. 2, Ch. 256, L. 1987; amd. Sec. 7, Ch. 468, L. 1995.

76-3-610. Effect of approval of preliminary plat. (1) Upon approving or conditionally approving a preliminary plat, the governing body shall provide the subdivider with a dated and signed statement of approval. This approval shall be in force for not more than 3 calendar years or less than 1 calendar year. At the end of this period the governing body may, at the request of the subdivider, extend its approval for no more than 1 calendar year, except that the governing body may extend its approval for a period of more than 1 year if that approval period is included as a specific condition of a written agreement between the governing body and the subdivider, according to 76-3-507.

(2) After the preliminary plat is approved, the governing body and its subdivisions may not impose any additional conditions as a prerequisite to final plat approval providing said approval is obtained within the original or extended approval period as provided in subsection (1).

History: En. Sec. 8, Ch. 500, L. 1973; amd. Sec. 6, Ch. 334, L. 1974; amd. Sec. 3, Ch. 498, L. 1975; amd. Sec. 1, Ch. 555, L. 1977; R.C.M. 1947, 11-3866(part); amd. Sec. 1, Ch. 223, L. 1981; amd. Sec. 1, Ch. 190, L. 1983.

76-3-611. Review of final plat. (1) The governing body shall examine each final subdivision plat and shall approve the plat only if:

(a) it conforms to the conditions of approval set forth on the preliminary plat and to the terms of this chapter and regulations adopted pursuant to this chapter; and

(b) the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be subdivided have been paid.

(2) (a) The governing body may require that final subdivision plats and certificates of survey be reviewed for errors and omissions in calculation or drafting by an examining land surveyor before recording with the county clerk and recorder. When the survey data shown on the plat or certificate of survey meets the conditions pursuant to this chapter, the examining land surveyor shall certify the compliance in a printed or stamped certificate on the plat or certificate of survey. The certificate must be signed by the surveyor.

(b) A land surveyor may not act as an examining land surveyor in regard to a plat or certificate of survey in which the surveyor has a financial or personal interest.

History: En. Sec. 9, Ch. 500, L. 1973; amd. Sec. 7, Ch. 334, L. 1974; amd. Sec. 1, Ch. 553, L. 1977; R.C.M. 1947, 11-3867(part); amd. Sec. 1, Ch. 273, L. 1981; amd. Sec. 1, Ch. 293, L. 1995.

76-3-612. Abstract of title required for review process. (1) The subdivider shall submit with the final plat a certificate of a title abstracter showing the names of the owners of record of the land to be subdivided and the names of lienholders or claimants of record against the land and the written consent to the subdivision by the owners of the land, if other than the subdivider, and any lienholders or claimants of record against the land.

(2) The governing body may provide for the review of the abstract or certificate of title of the land in question by the county attorney where the land lies in an unincorporated area or by the city or town attorney when the land lies within the limits of a city or town.

History: En. Sec. 7, Ch. 500, L. 1973; amd. Sec. 5, Ch. 334, L. 1974; R.C.M. 1947, 11-3865; amd. Sec. 186, Ch. 575, L. 1981.

76-3-613. Index of plats to be kept by county clerk and recorder. (1) The county clerk and recorder shall maintain an index of all recorded subdivision plats and certificates of survey.

(2) This index shall list plats and certificates of survey by the quarter section, section, township, and range in which the platted or surveyed land lies and shall list the recording or filing numbers of all plats depicting lands lying within each quarter section. Each quarter

section list shall be definitive to the exclusion of all other quarter sections. The index shall also list the names of all subdivision plats in alphabetical order and the place where filed.

History: En. Sec. 15, Ch. 500, L. 1973; R.C.M. 1947, 11-3873.

76-3-614. Correction of recorded plat. When a recorded plat does not definitely show the location or size of lots or blocks or the location or width of any street or alley, the governing body may at its own expense cause a new and correct survey and plat to be made and recorded in the office of the county clerk and recorder. The corrected plat must, to the extent possible, follow the plan of the original survey and plat. The surveyor making the resurvey shall endorse the corrected plat referring to the original plat and noting the defect existing therein and the corrections made.

History: En. Sec. 16, Ch. 500, L. 1973; R.C.M. 1947, 11-3874.

76-3-615 through 76-3-619 reserved.

76-3-620. Review requirements – written statement. In addition to the requirements of 76-3-604 and 76-3-609, a governing body may not deny or condition a subdivision approval under this part unless it provides a written statement to the applicant detailing the circumstances of the subdivision denial or condition imposition. The statement must include:

(1) the reason for the denial or condition imposition;

(2) the evidence that justifies the denial or condition imposition; and

(3) information regarding the appeal process for the denial or condition imposition.

History: En. Sec. 2, Ch. 224, L. 1995.

76-3-621. Park dedication requirement. (1) Except as provided in subsections (2), (3), and (6), a subdivider shall dedicate to the governing body a cash or land donation equal to:

(a) 11% of the area of the land proposed to be subdivided into parcels of one-half acre or smaller;

(b) 7.5% of the area of the land proposed to be subdivided into parcels larger than one-half acre and not larger than 1 acre;

(c) 5% of the area of the land proposed to be subdivided into parcels larger than 1 acre and not larger than 3 acres; and

(d) 2.5% of the area of the land proposed to be subdivided into parcels larger than 3 acres and not larger than 5 acres.

(2) When a subdivision is located totally within an area for which

density requirements have been adopted pursuant to a master plan under Title 76, chapter 1, or pursuant to zoning regulations under Title 76, chapter 2, the governing body may establish park dedication requirements based on the community need for parks and the development densities identified in the plans or regulations. Park dedication requirements established under this subsection are in lieu of those provided in subsection (1) and may not exceed 0.03 acres per dwelling unit.

(3) A park dedication may not be required for:

(a) a minor subdivision;

(b) land proposed for subdivision into parcels larger than 5 acres;

(c) subdivision into parcels that are all nonresidential;

(d) a subdivision in which parcels are not created, except when that subdivision provides permanent multiple spaces for recreational camping vehicles, mobile homes, or condominiums; or

(e) a subdivision in which only one additional parcel is created.

(4) The governing body, in consultation with the subdivider and the planning board or park board that has jurisdiction, may determine suitable locations for parks and playgrounds and, giving due weight and consideration to the expressed preference of the subdivider, may determine whether the park dedication must be a land donation, cash donation, or a combination of both. When a combination of land donation and cash donation is required, the cash donation may not exceed the proportional amount not covered by the land donation.

(5) (a) In accordance with the provisions of subsections (5)(b) and (5)(c), the governing body shall use the dedicated money or land for development, acquisition, or maintenance of parks to serve the subdivision.

(b) The governing body may use the dedicated money to acquire, develop, or maintain, within its jurisdiction, parks or recreational areas or for the purchase of public open space or conservation easements only if:

(i) the park, recreational area, open space, or conservation easement is within a reasonably close proximity to the proposed subdivision; and

(ii) the governing body has formally adopted a park plan that establishes the needs and procedures for use of the money.

(c) The governing body may not use more than 50% of the dedicated money for park maintenance.

(6) The local governing body shall waive the park dedication requirement if:

(a) (i) the preliminary plat provides for a planned unit development or other development with land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the development; and

(ii) the area of the land and any improvements set aside for park and recreational purposes equals or exceeds the area of the dedication required under subsection (1);

(b) (i) the preliminary plat provides long-term protection of critical wildlife habitat; cultural, historical, or natural resources; agricultural interests; or aesthetic values; and

(ii) the area of the land proposed to be subdivided, by virtue of providing long-term protection provided for in subsection (6)(b)(i), is reduced by an amount equal to or exceeding the area of the dedication required under subsection (1); or

(c) the area of the land proposed to be subdivided, by virtue of a combination of the provisions of subsections (6)(a) and (6)(b), is reduced by an amount equal to or exceeding the area of the dedication required under subsection (1).

(7) For the purposes of this section:

(a) "cash donation" is the fair market value of the unsubdivided, unimproved land; and

(b) "dwelling unit" means a residential structure in which a person or persons reside.

History: En. Sec. 9, Ch. 468, L. 1995.

Cross-References

Sale, lease, or exchange of dedicated park lands, 7-16-2324.

76-3-622 through 76-3-624 reserved.

76-3-625. Violations – actions against governing body. (1) A person who has filed with the governing body an application for a subdivision under this chapter may bring an action in district court to sue the governing body to recover actual damages caused by a final action, decision, or order of the governing body or a regulation adopted pursuant to this chapter that is arbitrary or capricious.

(2) A party identified in subsection (3) who is aggrieved by a decision of the governing body to approve, conditionally approve, or disapprove a proposed preliminary plat or final subdivision plat may, within 30 days after the decision, appeal to the district court in the county in which the property involved is located. The petition must specify the grounds upon which the appeal is made.

(3) The following parties may appeal under the provisions of subsection (2):

(a) the subdivider;

(b) a landowner with a property boundary contiguous to the proposed subdivision or a private landowner with property within the county or municipality where the subdivision is proposed if that landowner can show a likelihood of material injury to the landowner's property or its value;

(c) the county commissioners of the county where the subdivision is proposed; and

(d) (i) a first-class municipality, as described in 7-1-4111, if a subdivision is proposed within 3 miles of its limits;

(ii) a second-class municipality, as described in 7-1-4111, if a subdivision is proposed within 2 miles of its limits; and

(iii) a third-class municipality or a town, as described in 7-1-4111, if a subdivision is proposed within 1 mile of its limits.

(4) For the purposes of this section, "aggrieved" means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, who has been or is likely to be specially and injuriously affected by the decision.

History: En. Sec. 10, Ch. 468, L. 1995.

CHAPTER 6

OPEN SPACES

Part 1 – General Provisions

76-6-101. Short title.
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76-6-106. Acquisition and designation of real property by public body.
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Chapter Cross-References

Greenbelt appraisal, Title 15, ch. 7, part 2.

Part 1
General Provisions

76-6-101. Short title. This chapter may be cited as the "Open-Space Land and Voluntary Conservation Easement Act".

History: En. Sec. 1, Ch. 337, L. 1969; amd. Sec. 1, Ch. 489, L. 1975; R.C.M. 1947, 62-601.

76-6-102. Findings and policy. The legislature finds that:

(1) the rapid growth and spread of urban development are creating critical problems of service and finance for the state and local governments;

(2) the present and future rapid population growth in urban areas is creating severe problems of urban and suburban living;

(3) this population spread and its attendant development are disrupting and altering the remaining natural areas, biotic communities, and geological and geographical formations and thereby providing the potential for the destruction of scientific, educational, aesthetic, and ecological values;

(4) the present and future rapid population spread throughout the state of Montana into its open spaces is creating serious problems of lack of open space and overcrowding of the land;

(5) to lessen congestion and to preserve natural, ecological, geographical, and geological elements, the provision and preservation of open-space lands are necessary to secure park, recreational, historic, and scenic areas and to conserve the land, its biotic communities, its natural resources, and its geological and geographical elements in their natural state;

(6) the acquisition or designation of interests and rights in real property by certain qualifying private organizations and by public bodies to provide or preserve open-space land is essential to the solution of these problems, the accomplishment of these purposes, and the health and welfare of the citizens of the state;

(7) the exercise of authority to acquire or designate interests and rights in real property to provide or preserve open-space land and the expenditure of public funds for these purposes would be for a public purpose; and

(8) the statutory provision enabling certain qualifying private organizations to acquire interests and rights in real property to provide or preserve open-space land is in the public interest.

History: En. Sec. 2, Ch. 337, L. 1969; amd. Sec. 2, Ch. 489, L. 1975; R.C.M. 1947, 62-602(part).

76-6-103. Purposes. In accordance with the findings in 76-6-102, the legislature states that the purposes of this chapter are to:

(1) authorize and enable public bodies and certain qualifying private organizations voluntarily to provide for the preservation of native plants or animals, biotic communities, or geological or geographical formations of scientific, aesthetic, or educational interest;

(2) provide for the preservation of other significant open-space land anywhere in the state either in perpetuity or for a term of years; and

(3) encourage private participation in such a program by establishing the policy to be utilized in determining the property tax to be levied upon the real property which is subject to the provisions of this chapter.

History: En. Sec. 2, Ch. 337, L. 1969; amd. Sec. 2, Ch. 489, L. 1975; R.C.M. 1947, 62-602(part).

76-6-104. Definitions. The following terms whenever used or referred to in this chapter shall have the following meanings unless a different meaning is clearly indicated by the context:

(1) "Comprehensive planning" means planning for development and shall include:

(a) preparation of general physical plans with respect to the pattern and intensity of land use and the provision of public facilities, including transportation facilities, together with long-range fiscal plans for such development as a guide for long-range development;

(b) programming and financing plans for capital improvements;

(c) coordination of all related plans and planned activities at both the intra governmental and intergovernmental levels; and

(d) preparation of regulatory and administrative measures in support of the foregoing.

(2) "Conservation easement" means an easement or restriction, running with the land and assignable, whereby an owner of land voluntarily relinquishes to the holder of such easement or restriction any or all rights to construct improvements upon the land or to substantially alter the natural character of the land or to permit the construction of improvements upon the land or the substantial alteration of the natural character of the land, except as this right is expressly reserved in the instruments evidencing the easement or restriction.

(3) "Open-space land" means any land which is provided or preserved for:

(a) park or recreational purposes;

(b) conservation of land or other natural resources;

(c) historic or scenic purposes; or

(d) assisting in the shaping of the character, direction, and timing of community development.

(4) "Public body" means the state, counties, cities, towns, and other municipalities.

(5) "Qualified private organization" means a private organization:

(a) competent to own interests in real property;

(b) which qualifies and holds a general tax exemption under the federal Internal Revenue Code, section 501(c); and

(c) whose organizational purposes are designed to further the purposes of this chapter.

(6) "Urban area" means any area which is urban in character, including surrounding areas which form an economic and socially related region, taking into consideration such factors as present and future population trends and patterns of urban growth, location of transportation facilities and systems, and distribution of industrial, commercial, residential, governmental, institutional, and other activities.

History: En. Sec. 3, Ch. 337, L. 1969; amd. Sec. 3, Ch. 489, L. 1975; R.C.M. 1947, 62-603(part).

76-6-105. Construction of chapter. (1) To the extent that the provisions of this chapter are inconsistent with the provisions of any other law, the provisions of this chapter are controlling. The powers conferred by this chapter are in addition and supplemental to the powers conferred by any other law.

(2) This chapter may not be construed to imply that any easement, covenant, condition, or restriction that does not have the benefit of this chapter is not enforceable based on any provisions of this chapter. This chapter does not diminish the powers granted by any general or special law to acquire by purchase, gift, eminent domain, or otherwise and to use land for public purposes.

History: (1)En. Sec. 9, Ch. 337, L. 1969; Sec. 62-609, R.C.M. 1947; (2)En. 62-618 by Sec. 14, Ch. 489, L. 1975; Sec. 62-618, R.C.M. 1947; R.C.M. 1947, 62-609(part), 62-618; amd. Sec. 279, Ch. 42, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 42 in (2), at beginning, substituted "chapter" for "subsection"; and made minor changes in style. Amendment effective March 12, 1997.

76-6-106. Acquisition and designation of real property by public body. To carry out the purposes of this chapter, any public body may:

(1) acquire by purchase, gift, devise, bequest, or grant title to or any interests or rights in real property, including land and water, that will provide a means for the preservation or provision of significant open-space land or the preservation of native plants or animals, biotic communities, or geological or geographical formations of scientific, aesthetic, or educational interest, or both;

(2) designate any real property, including land and water, in which it has an interest to be retained and used for the preservation and provision of significant open-space land or the preservation of native plants or animals, biotic communities, or geological or geographical formations of scientific, aesthetic, or educational interests, or both.

History: En. Sec. 4, Ch. 337, L. 1969; amd. Sec. 4, Ch. 489, L. 1975; R.C.M. 1947, 62-604(part).

76-6-107. Conversion or diversion of open-space land. (1) No open-space land, the title to or interest or right in which has been acquired under this chapter, shall be converted or diverted from open-space land use unless the conversion or diversion is:

(a) necessary to the public interest;

(b) not in conflict with the program of comprehensive planning for the area; and

(c) permitted by the conditions imposed at the time of the creation of the conservation easement.

(2) Other real property of at least equal fair market value and of as nearly as feasible equivalent usefulness and location for use as open-space land shall be substituted within a reasonable period not exceeding 1 year for any real property converted or diverted from open-space land use. Property substituted is subject to the provisions of this chapter.

History: En. Sec. 5, Ch. 337, L. 1969; amd. Sec. 5, Ch. 489, L. 1975; R.C.M. 1947, 62-605(1).

76-6-108. Conveyance or lease of open-space lands. A grantee may convey or lease any real property it has acquired or which has been designated for the purposes of this chapter. The conveyance or lease shall be subject to contractual arrangements that will preserve the property as open-space land and which are consistent with the express terms and conditions of the grant unless the property is to be converted or diverted from open-space land use in accordance with the provisions of 76-6-107.

History: En. Sec. 5, Ch. 337, L. 1969; amd. Sec. 5, Ch. 489, L. 1975; R.C.M. 1947, 62-605(2).

76-6-109. Powers of public bodies. (1) A public body shall have all the powers necessary or convenient to carry out the purposes and provisions of this chapter, including the following powers in addition to others granted by this chapter:

(a) to borrow funds and make expenditures necessary to carry out the purposes of this chapter;

(b) to advance or accept advances of public funds;

(c) to apply for and accept and utilize grants and any other assistance from the federal government and any other public or private sources, to give such security as may be required, to enter into and carry out contracts or agreements in connection with the assistance, and to include in any contract for assistance from the federal government such conditions imposed pursuant to federal laws as the public body may deem reasonable and appropriate and which are not inconsistent with the purposes of this chapter;

(d) to make and execute contracts and other instruments necessary or convenient to the exercise of its powers under this chapter;

(e) in connection with the real property acquired or designated for the purposes of this chapter, to provide or to arrange or contract for the provision, construction, maintenance, operation, or repair by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities, or other facilities or structures that may be necessary to the provision, preservation, maintenance, and management of the property as open-space land;

(f) to insure or provide for the insurance of any real or personal property or operations of the public body against any risks or hazards, including the power to pay premiums on the insurance;

(g) to demolish or dispose of any structures or facilities which may be detrimental to or inconsistent with the use of real property as open-space land; and

(h) to exercise any or all of its functions and powers under this chapter jointly or cooperatively with public bodies of one or more states, if they are so authorized by state law, and with one or more public bodies of this state and to enter into agreements for joint or cooperative action.

(2) For the purposes of this chapter, the state or a city, town, other municipality, or county may:

(a) appropriate funds;

(b) levy taxes and assessments according to existing codes and statutes not to exceed 1 mill;

(c) issue and sell its general obligation bonds in the manner and within the limitations prescribed by the applicable laws of the state; and

(d) exercise its powers under this chapter through a board or commission or through such office or officers as its governing body by resolution determines or as the governor determines in the case of the state.

History: En. Sec. 6, Ch. 337, L. 1969; R.C.M. 1947, 62-606.

76-6-110. Authorization and funding for planning commission. (1) The state, counties, cities, towns, or other municipalities in an urban area, acting jointly or in cooperation, are authorized to perform comprehensive planning for the urban area and to establish and maintain a planning commission for this purpose and related planning activities.

(2) Funds may be appropriated and made available for the comprehensive planning. Financial or other assistance from the federal government and any other public or private sources may be accepted and utilized for the planning.

History: En. Sec. 7, Ch. 337, L. 1969; R.C.M. 1947, 62-607.

Part 2
Conservation Easements

Part Cross-References
Servitudes and easements, Title 70, ch. 17, part 1.

76-6-201. Conservation easements in general. (1) Where a public body acquires under this chapter an interest in land less than fee, this acquisition shall be by conservation easement.

(2) A conservation easement may be applied to urban or nonurban land.

History: En. Secs. 3, 4, Ch. 337, L. 1969; amd. Secs. 3, 4, Ch. 489, L. 1975; R.C.M. 1947, 62-603(part), 62-604(part).

76-6-202. Duration of conservation easements. Conservation easements may be granted either in perpetuity or for a term of years. If granted for a term of years, that term may not be less than 15 years. An easement granted for a term of years may be renewed for a term of 15 or more years upon the execution of a new granting instrument by the parties.

History: En. Sec. 3, Ch. 337, L. 1969; amd. Sec. 3, Ch. 489, L. 1975; R.C.M. 1947, 62-603(part).

76-6-203. Types of permissible easements. Easements or restrictions under this chapter may prohibit or limit any or all of the following:

(1) structures--construction or placing of buildings, camping trailers, house trailers, mobile homes, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground;

(2) landfill--dumping or placing of soil or other substance or material as landfill or dumping or placing of trash, waste, or unsightly or offensive materials;

(3) vegetation--removal or destruction of trees, shrubs, or other vegetation;

(4) loam, gravel, etc.--excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance;

(5) surface use--surface use except for such purposes permitting the land or water area to remain predominantly in its existing condition;

(6) acts detrimental to conservation--activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat and preservation;

(7) subdivision of land--subdivision of land as defined in 76-3-103, 76-3-104, and 76-3-202;

(8) other acts--other acts or uses detrimental to such retention of

land or water areas in their existing conditions.

History: En. 62-610 by Sec. 7, Ch. 489, L. 1975; R.C.M. 1947, 62-610; amd. Sec. 16, Ch. 266, L. 1979.

76-6-204. Acquisition of conservation easements by qualified private organizations. Any qualified private organization may acquire by a conservation easement, by purchase, or by gift, devise, bequest, or grant title to any interest or interests in rights in real property, including land and water, that will provide a means for the preservation or provision of permanent significant open-space land and/or the preservation of native plants or animals, biotic communities, or geological or geographical formations of scientific, aesthetic, or educational interest.

History: En. 62-611 by Sec. 8, Ch. 489, L. 1975; R.C.M. 1947, 62-611.

76-6-205. Assignability of easements. For the purposes of this chapter, all conservation easements shall be assignable unless the instrument of conveyance or ownership expressly stipulates otherwise. No conservation easement shall be unenforceable on account of the benefit being assignable or being assigned to any other government body or private organization unless such assignment has violated the express terms of the instrument of conveyance or ownership. The assignees must be qualified under the terms of this chapter to hold a conservation easement.

History: En. 62-613 by Sec. 10, Ch. 489, L. 1975; R.C.M. 1947, 62-613.

76-6-206. Review by local planning authority. In order to minimize conflict with local comprehensive planning, all conservation easements shall be subject to review prior to recording by the appropriate local planning authority for the county within which the land lies. It shall be the responsibility of the entity acquiring the conservation easement to present the proposed conveyance of the conservation easement to the appropriate local planning authority. The local planning authority shall have 90 days from receipt of the proposed conveyance within which to review and to comment upon the relationship of the proposed conveyance to comprehensive planning for the area. Such comments will not be binding on the proposed grantor or grantee but shall be merely advisory in nature. The proposed conveyance may be recorded after comments have been received from the local planning authority or the local planning authority has indicated in writing it will have no comments or 90 days have elapsed, whichever occurs first.

History: En. 62-614 by Sec. 11, Ch. 489, L. 1975; R.C.M. 1947, 62-614.

Cross-References

Local planning and zoning, Title 76, ch. 2.

76-6-207. Recording and description of easement. (1) All conservation easements shall be duly recorded in the county where the land lies so as to effect their titles in the manner of other conveyances of interest in land and shall describe the land subject to said conservation easement by adequate legal description or by reference to a recorded plat showing its boundaries.

(2) The county clerk and recorder shall upon recording cause a copy of the conservation easement to be placed in a separate file within the office of the county clerk and recorder and shall cause a copy of the conservation easement to be mailed to the department of revenue.

History: En. 62-615 by Sec. 12, Ch. 489, L. 1975; R.C.M. 1947, 62-615.

Cross-References

Procedure to record documents, 7-4-2617.

76-6-208. Taxation of property subject to conservation easement. (1) Assessments made for taxation on property subject to a conservation easement either in perpetuity or for a term of years, where a public body or a qualifying private organization holds the conservation easement, shall be determined on the basis of the restricted purposes for which the property may be used. The minimum assessed value for land subject to an easement conveyed under this chapter may not be less than the actual assessed value of such land in calendar year 1973. Any land subject to such easement may not be classified into a class affording a lesser assessed valuation solely by reason of the creation of the easement. The value of the interest held by a public body or qualifying private organization shall be exempt from property taxation.

(2) Expiration of an easement granted for a term of years shall not result in a reassessment of the land for property tax purposes if the easement is renewed and the granting instrument reflecting the renewed easement is executed and properly filed not later than 15 days after the date of expiration.

History: En. Sec. 8, Ch. 337, L. 1969; amd. Sec. 6, Ch. 489, L. 1975; R.C.M. 1947, 62-608.

Cross-References

Greenbelt appraisal, Title 15, ch. 7, part 2.
Assessment procedure, Title 15, ch. 8.

76-6-209. Easements to run with the land. The provisions of 70-17-202 and 70-17-203(1) and (2) notwithstanding, for the purposes of this chapter, all conservation easements, whether held by public bodies or qualifying private organizations, shall be considered to run with the land, whether or not such fact is stipulated in the instrument of conveyance or ownership.

History: **En. 62-612 by Sec. 9, Ch. 489, L. 1975; R.C.M. 1947, 62-612(part).**

76-6-210. Enforcement. (1) Conservation easements may be enforced by injunction or proceedings in equity. Representatives of the grantee of the conservation easement shall be entitled to enter the land in a reasonable manner and at reasonable times to assure compliance.

(2) No conservation easement shall be unenforceable on account of lack of privity of estate or contract or lack of benefit to particular land or on account of such conservation easement not being an appurtenant easement or because such easement is an easement in gross.

History: **En. 62-612, 62-616 by Secs. 9, 13, Ch. 489, L. 1975; R.C.M. 1947, 62-612(part), 62-616.**

Cross-References

Injunctions, Title 27, ch. 19.

76-6-211. Who may enforce easement. (1) The owner of any estate in a dominant tenement or the occupant of such tenement may maintain an action for the enforcement of an easement attached thereto.

(2) Public bodies holding conservation easements shall enforce the provisions of these easements.

History: **(1)En. Sec. 1258, Civ. C. 1895; re-en. Sec. 4515, Rev. C. 1907; re-en. Sec. 6757, R.C.M. 1921; Cal. Civ. C. Sec. 809; Field Civ. C. Sec. 253; re-en. Sec. 6757, R.C.M. 1935; Sec. 67-609, R.C.M. 1947; redes. 62-617 by Sec. 15, Ch. 489, L. 1975; Sec. 62-617, R.C.M. 1947; (2)En. Sec. 4, Ch. 337, L. 1969; amd. Sec. 4, Ch. 489, L. 1975; Sec. 62-604, R.C.M. 1947; R.C.M. 1947, 62-604(part), 62-617.**

CHAPTER 22
CORNER RECORDATION ACT
SURVEYS AND COORDINATES

Part 1 – Corner Recordation Act

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Part 1
Corner Recordation Act

70-22-101. Short title. This part may be cited as the "Corner Recordation Act of Montana".

History: En. Sec. 1, Ch. 202, L. 1963; R.C.M. 1947, 67-2001.

70-22-102. Purpose. It is the purpose of this part to protect and perpetuate public land survey corners and information concerning the location of such corners by requiring the systematic establishment of monuments and recording of information concerning the marking of the location of such public land survey corners and to allow the systematic location of other property corners thereby providing for property security and a coherent system of property location and identification of ownerships and thereby eliminating the repeated necessity for reestablishment and relocations of such corners where once they are established and located.

History: En. Sec. 2, Ch. 202, L. 1963; R.C.M. 1947, 67-2002.

70-22-103. Definitions. Except where the context indicates a different meaning, terms used in this part shall be defined as follows:

(1) An "accessory to a corner" is any exclusively identifiable physical object whose spatial relationship to the corner is recorded. Accessories may be bearing trees, bearing objects, monuments, reference monuments, line trees, pits, mounds, charcoal-filled bottles, steel or wooden stakes, or other objects.

(2) The "board" is the board of professional engineers and professional land surveyors, provided for in 2-15-1873.

(3) A "corner", unless otherwise qualified, means a property corner or a property controlling corner or a public land survey corner or any combination of these.

(4) A "monument" is an accessory that is presumed to occupy the exact position of a corner.

(5) A "property controlling corner" for a property is a public land survey corner or any property corner which does not lie on a property line of the property in question but which controls the location of one or more of the property corners of the property in question.

(6) A "property corner" is a geographic point on the surface of the earth and is on, a part of, and controls a property line.

(7) A "public land survey corner" is any corner actually established and monumented in an original survey or resurvey used as a basis of legal description for issuing a patent for the land to a private person from the United States government.

(8) A "reference monument" is a special monument that does not occupy the same geographical position as the corner itself but whose spatial relationship to the corner is recorded and which serves to witness the corner.

(9) A "registered surveyor" is a surveyor who is registered to practice land surveying under Title 37, chapter 67, and has a paid-up license for that calendar year or who is authorized under Title 37, chapter 67, to practice land surveying.

History: En. Sec. 3, Ch. 202, L. 1963; amd. Sec. 320, Ch. 350, L. 1974; R.C.M. 1947, 67-2003; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 73, Ch. 83, L. 1989.

70-22-104. Filing of corner record required. A surveyor shall complete, sign, stamp with his seal, and file with the county clerk and recorder of the county where the corner is situated a written record of corner establishment or restoration to be known as a "corner record" for every public land survey corner and accessory to such corner which is established, reestablished, monumented, remonumented, restored, rehabilitated, perpetuated, or used as control in any survey by such surveyor and within 90 days thereafter unless the corner and its accessories are substantially as described in an existing corner record filed in accordance with the provisions of this part.

History: En. Sec. 4, Ch. 202, L. 1963; R.C.M. 1947, 67-2004.

70-22-105. Filing permitted as to any corner or accessory. A surveyor may file such corner record as to any property corner, property controlling corner, reference monument, or accessory to a corner.

History: En. Sec. 5, Ch. 202, L. 1963; R.C.M. 1947, 67-2005.

70-22-106. Filing of records on corners established before effective date. Corner records may be filed concerning corners established, reestablished, or restored before July 1, 1963.

History: En. Sec. 10, Ch. 202, L. 1963; R.C.M. 1947, 67-2010.

70-22-107. Form and contents of record – board to prescribe. The board shall by regulation provide and prescribe the information which shall be necessary to be included in the corner record, and the board shall prescribe the form in which such corner record shall be presented and filed.

History: En. Sec. 6, Ch. 202, L. 1963; R.C.M. 1947, 67-2006.

70-22-108. Corner records to be certified. No corner record shall be filed unless the same is signed by a registered surveyor and stamped with his seal, or in the case of an agency of the United States government or the state of Montana, the certificate may be signed by the survey party chief making the survey and approved, signed, and sealed by the registered surveyor in responsible charge of the agency.

History: En. Sec. 9, Ch. 202, L. 1963; R.C.M. 1947, 67-2009.

70-22-109. Duties of county clerk. (1) The county clerk and recorder of the county containing the corner shall receive the completed corner record and preserve it in a hardbound book. The books shall be numbered in numerical order as filled.

(2) The clerk shall number the forms in numerical order as they are filed.

(3) The book and page number in which the corner record is filed shall be placed by the clerk near that same corner on a cross-index plat which the clerk shall provide for such a purpose.

(4) The county clerk and recorder shall make these records available for public inspection during all usual office hours.

(5) There is no filing fee.

History: En. Sec. 7, Ch. 202, L. 1963; R.C.M. 1947, 67-2007; amd. Sec. 1, Ch. 143, L. 1981.

70-22-110. Surveyor to rehabilitate monument. In every case where a corner record of a public land survey corner is required to be filed under the provisions of this part, the surveyor must reconstruct or rehabilitate the monument of such corner and accessories to such corner so that the same shall be left by him in such physical condition that it remains as permanent a monument as is reasonably possible and so that the same may be reasonably expected to be located with facility at all times in the future.

History: En. Sec. 8, Ch. 202, L. 1963; R.C.M. 1947, 67-2008.

Part 2
Montana Coordinate System

70-22-201. Coordinate systems adopted – designation – division of state into zones. (1) The North American datum systems of plane coordinates that have been established by the national ocean survey/national geodetic survey (formerly the United States coast and geodetic survey) or a successor for defining and stating the positions or locations of points on the surface of the earth within the state of Montana are hereafter to be known and designated as the "Montana coordinate system NAD 27" and the "Montana coordinate system NAD 83".

(2) For the purpose of the use of the Montana coordinate system NAD 27, the state is divided into a north zone and a central zone and a south zone as provided in subsections (3) through (5).

(3) The area now included in the following counties shall constitute the north zone: Blaine, Chouteau, Daniels, Flathead, Glacier, Hill, Liberty, Lincoln, Phillips, Pondera, Roosevelt, Sheridan, Teton, Toole, and Valley.

(4) The area now included in the following counties shall constitute the central zone: Cascade, Dawson, Fergus, Garfield, Judith Basin, Lake, Lewis and Clark, McCone, Meagher, Mineral, Missoula, Petroleum, Powell, Prairie, Richland, Sanders, and Wibaux.

(5) The area now included in the following counties shall

constitute the south zone: Beaverhead, Big Horn, Broadwater, Carbon, Carter, Custer, Deer Lodge, Fallon, Gallatin, Golden Valley, Granite, Jefferson, Madison, Musselshell, Park, Powder River, Ravalli, Rosebud, Silver Bow, Stillwater, Sweet Grass, Treasure, Wheatland, and Yellowstone.

(6) For the purpose of the use of the Montana coordinate system NAD 83, the state is a single zone.

History: En. Sec. 1, Ch. 232, L. 1965; amd. Sec. 1, Ch. 73, L. 1975; R.C.M. 1947, 67-2011; amd. Sec. 1, Ch. 137, L. 1987.

70-22-202. Designation of system by zone. (1) As established for use in the north zone, the Montana coordinate system NAD 27 shall be named and in any land description in which it is used it shall be designated the "Montana coordinate system NAD 27, north zone".

(2) As established for use in the central zone, the Montana coordinate system NAD 27 shall be named and in any land description in which it is used it shall be designated the "Montana coordinate system NAD 27, central zone".

(3) As established for use in the south zone, the Montana coordinate system NAD 27 shall be named and in any land description in which it is used it shall be designated the "Montana coordinate system NAD 27, south zone".

History: En. Sec. 2, Ch. 232, L. 1965; R.C.M. 1947, 67-2012; amd. Sec. 2, Ch. 137, L. 1987.

70-22-203. Use of x- and y-coordinates. (1) For the Montana coordinate system NAD 27, the plane coordinate values for a point on the earth's surface used to express the geographic position or location of such point in the appropriate zone of this system shall consist of two distances expressed in terms of a United States survey foot and decimals of a foot.

(2) For the Montana coordinate system NAD 83, the plane coordinate values for a point on the earth's surface used to express the geographic position or location of such point in the zone shall consist of two distances expressed in either meters and decimals of a meter or in feet and decimals of a foot. The international conversion value (1 foot equals 0.3048 meters exactly) shall be used. The unit of measure shall be clearly stated when the coordinate values are expressed.

(3) One of the distances used to express a position or location, to be known as the "x-coordinate", shall give the position in an east-and-west direction; the other, to be known as the "y-coordinate", shall give the position in a north-and-south direction. These coordinates shall be made to depend upon and conform to plane rectangular coordinate values for the monumented points of the North American horizontal geodetic control

network as published by the national ocean survey/national geodetic survey or its successors and whose plane coordinates have been computed on the systems designated by this part. Any such station may be used for establishing a survey connection to either Montana coordinate system.

History: En. Sec. 3, Ch. 232, L. 1965; R.C.M. 1947, 67-2013; amd. Sec. 3, Ch. 137, L. 1987.

70-22-204. Description of location. (1) For the purposes of describing the location of any survey station in Montana, it is considered a complete, legal, and satisfactory description of such location to give the position of the survey station on the system of plane coordinates designated in this part.

(2) When any tract of land to be defined by a single description extends from one into another of the NAD 27 coordinate zones, the positions of all points on its boundaries may be referred to either of such zones, the zone which is used being specifically named in the description.

History: En. Sec. 4, Ch. 232, L. 1965; R.C.M. 1947, 67-2014; amd. Sec. 4, Ch. 137, L. 1987.

70-22-205. Technical description of zones. For purposes of more precisely defining the Montana coordinate systems NAD 27 and NAD 83, the following description by the national ocean survey/national geodetic survey (formerly the United States coast and geodetic survey) is adopted:

(1) The Montana coordinate system NAD 27, north zone, is a Lambert conformal projection of the Clarke spheroid of 1866, having standard parallels at north latitudes 47° 51' and 48° 43', along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 109° 30' west of Greenwich and the parallel 47° 00' north latitude. This origin is given the coordinates: x = 2,000,000 feet and y = 0 feet.

(2) The Montana coordinate system NAD 27, central zone, is a Lambert conformal projection of the Clarke spheroid of 1866, having standard parallels at north latitudes 46° 27' and 47° 53', along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 109° 30' west of Greenwich and the parallel 45° 50' north latitude. This origin is given the coordinates: x = 2,000,000 feet and y = 0 feet.

(3) The Montana coordinate system NAD 27, south zone, is a Lambert conformal projection of the Clarke spheroid of 1866, having standard parallels at north latitudes 44° 52' and 46° 24', along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 109° 30' west of Greenwich and the parallel 44° 00' north latitude. This origin is given the coordinates: x = 2,000,000

feet and y = 0 feet.

(4) The Montana coordinate system NAD 83 is a Lambert conformal conic projection of the GRS 80 (Geodetic Reference System 1980) ellipsoid, having standard parallels of north latitudes 45° 00' and 49° 00', along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 109° 30' west of Greenwich and the parallel 44° 15' north latitude. This origin is given the coordinates: x = 600,000 meters and y = 0 meters.

History: En. Sec. 5, Ch. 232, L. 1965; amd. Sec. 2, Ch. 73, L. 1975; R.C.M. 1947, 67-2015; amd. Sec. 5, Ch. 137, L. 1987.

70-22-206. Conformity to standards required for use of coordinates in recorded instrument. No coordinates based on the Montana coordinate systems NAD 27 and NAD 83 purporting to define the position of a point on a land boundary shall be presented to be recorded in any public land records or deed records unless the coordinates have been established in conformity with the national prescribed standards for third-order class II horizontal control surveys and provided that these surveys have been tied to or originated from monumented first- or second-order horizontal control stations that are adjusted to and published in the national network of geodetic control and are within 3 miles of said land boundaries. Standards of accuracy and specifications apply for first-, second-, and third-order geodetic surveying as prepared and published by the federal geodetic control committee (FGCC) of the United States department of commerce or its successors. Publication of the existing control stations or acceptance with intent to publish newly established control stations by the national ocean survey/national geodetic survey constitutes evidence of adherence to FGCC specifications.

History: En. Sec. 6, Ch. 232, L. 1965; R.C.M. 1947, 67-2016; amd. Sec. 6, Ch. 137, L. 1987.

70-22-207. Use of term Montana coordinate system limited. The use of the term "Montana coordinate system NAD 27 north, central, or south zone" or "Montana coordinate system NAD 83" on any map, report of survey, or other document shall be limited to coordinates based on the Montana coordinate systems as defined in this part.

History: En. Sec. 7, Ch. 232, L. 1965; R.C.M. 1947, 67-2017; amd. Sec. 7, Ch. 137, L. 1987.

70-22-208. Public land survey description to prevail. Whenever coordinates based on the Montana coordinate system are used to describe any tract of land which in the same document is also described by reference to any subdivision, line, or corner of the United States public land surveys, the description by coordinates shall be construed as supplemental to the basic description of such subdivision, line, or corner contained in the official plats and field notes filed of record.

History: En. Sec. 8, Ch. 232, L. 1965; R.C.M. 1947, 67-2018; amd. Sec. 8, Ch. 137, L. 1987.

70-22-209. Purchaser or mortgagee not required to rely on description using systems. Nothing contained in this part shall require any purchaser or mortgagee to rely on a description, any part of which depends exclusively upon the Montana coordinate systems.

History: En. Sec. 9, Ch. 232, L. 1965; R.C.M. 1947, 67-2019; amd. Sec. 9, Ch. 137, L. 1987.

70-22-210. Limit on use of Montana coordinate system NAD 27. The Montana coordinate system NAD 27 north, central, and south zone may not be used after July 1, 1993; the Montana coordinate system NAD 83 is the sole system to be used after this date.

History: En. Sec. 10, Ch. 137, L. 1987.

CAPITAL IMPROVEMENTS PLANS

ROLE OF PLANNING BOARD

(LOCAL PLANNING ENABLING ACT)

(Emphasis Added For Clarity)

TITLE 76

CHAPTER 1

Part 1

76-1-106. Role of the planning board. (1) To assure the promotion of public health, safety, morals, convenience, order, or the general welfare and for the sake of efficiency and economy in the process of community development, the planning board shall prepare a master plan and shall serve in an advisory capacity to the local governing bodies establishing the planning board.

(2) The planning board may also propose policies for:

(a) subdivision plats;

(b) the development of public ways, public places, public structures, and public and private utilities;

(c) the issuance of improvement location permits on platted and unplatted lands;

(d) the laying out and development of public ways and services to platted and unplatted lands.

History: En. Sec. 28, Ch. 246, L. 1957; amd. Sec. 10, Ch. 247, L. 1963; R.C.M. 1947, 11-3828(1), (2).

CAPITAL IMPROVEMENT PLANS

CAPITAL IMPROVEMENTS PLAN AS PART OF COMPREHENSIVE PLAN

(LOCAL PLANNING ENABLING ACT)
(Emphasis Added For Clarity)

TITLE 76

CHAPTER 1

Part 6

MASTER PLAN

Part Cross-References

Compliance with plan required for annexation, 7-2-4734(3).
Publication of legal notices, 7-5-2411; Title 18, ch. 7, part 2.
Compliance required by cemetery associations, 35-20-201.

76-1-601. Master plan – contents. The planning board shall prepare and propose a master plan for the jurisdictional area. The plan may propose ordinances or resolutions for possible adoption by the appropriate governing body. The plan may include:

(1) careful and comprehensive surveys and studies of existing conditions and the probable future growth of the city and its environs or of the county;

(2) maps, plats, charts, and descriptive material presenting basic information, locations, extent, and character of any of the following:

(a) history, population, and physical site conditions;

(b) land use, including the height, area, bulk, location, and use of private and public structures and premises;

(c) population densities;

(d) community centers and neighborhood units;

(e) blighted and slum areas;

(f) streets and highways, including bridges, viaducts, subways, parkways, alleys, and other public ways and places;

(g) sewers, sanitation, and drainage, including handling, treatment, and disposal of excess drainage waters, sewage, garbage, refuse, and other wastes;

(h) flood control and prevention;

(i) public and private utilities, including water, light, heat, communication, and other services;

(j) transportation, including rail, bus, truck, air, and water transport and their terminal facilities;

(k) local mass transit, including motor and trolley bus; street, elevated, or underground railways; and taxicabs;

(l) parks and recreation, including parks, playgrounds, reservations, forests, wildlife refuges, and other public grounds, spaces, and facilities of a recreational nature;

(m) public buildings and institutions, including governmental administration and service buildings, hospitals, infirmaries, clinics, penal and correctional institutions, and other civic and social service buildings;

(n) education, including location and extent of schools, colleges, and universities;

(o) land utilization, including areas for manufacturing and industrial uses, concentration of wholesale business, retail business, and other commercial uses, residential uses, and areas for mixed uses;

(p) conservation of water, soil, agricultural, and mineral resources;

(q) any other factors which are a part of the physical, economic, or social situation within the city or county;

(3) reports, maps, charts, and recommendations setting forth plans for the development, redevelopment, improvement, extension, and revision of the subjects and physical situations of the city or county set out in subsection (2) so as to substantially accomplish the object of this chapter as set out in 76-1-101 and 76-1-102;

(4) a long-range development program of public works projects, based on the recommended plans of the planning board, for the purpose of eliminating unplanned, unsightly, untimely, and extravagant projects and with a view to stabilizing industry and employment and the keeping of such program up-to-date for all separate taxing units within the city or county, respectively, for the purpose of assuring efficient and economic use of public funds;

(5) recommendations setting forth the development, improvement, and extension of areas, if any, to be set aside for use as trailer courts and sites for mobile homes.

History: Ap. p. Sec. 31, Ch. 246, L. 1957; amd. Sec. 12, Ch. 247, L. 1963; amd. Sec. 1, Ch. 156, L. 1973; Sec. 11-3831, R.C.M. 1947; Ap. p. Sec. 3, Ch. 246, L. 1957; amd. Sec. 2, Ch. 247, L. 1963; amd. Sec. 1, Ch. 349, L. 1973; Sec. 11-3803, R.C.M. 1947; R.C.M. 1947, 11-3803(part), 11-3831.

CAPITAL IMPROVEMENTS PLANS

MUNICIPAL CAPITAL IMPROVEMENT PROGRAM FUND

(Note: This statute is only one funding option of many different options that municipalities have to pay for capital improvements.)

TITLE 7
CHAPTER 6
Part 41
General Provisions Related to Municipalities

7-6-4134. Capital improvement program fund. An amount not to exceed 10% of the money received from an all-purpose levy provided for in 7-6-4452 may be placed in a separate fund, known as the capital improvement program fund, to be earmarked for the replacement, improvement, and acquisition of property, facilities, or equipment, provided that a capital improvement program has been formally adopted by resolution of the city or town governing body.

History: En. Sec. 2, Ch. 82, L. 1965; amd. Sec. 2, Ch. 226, L. 1969; amd. Sec. 2, Ch. 226, L. 1969; amd. Sec. 2, Ch. 375, L. 1971; amd. Sec. 57, Ch. 566, L. 1977; R.C.M. 1947, 84-4701.2(2); amd. Sec. 8, Ch. 458, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 458 near beginning increased amount from 5% to 10%; after "levy" inserted "provided for in 7-6-4452"; after "replacement" inserted "improvement"; after "property" substituted "facilities" for "plant"; after "adopted by" substituted "resolution of the city or town governing body" for "city or town ordinance"; and made minor changes in style. Amendment effective April 30, 1997.

Applicability: Section 31, Ch. 458, L. 1997, provided: "[This act] applies to municipal budgeting procedures commencing on July 1, 1997."

7-6-4135. Investment of money in capital improvement program fund. The money held in the capital improvement program fund must, whenever possible, be invested pursuant to Title 7, chapter 6, part 2, and all interest must be credited to the fund.

History: En. Sec. 2, Ch. 82, L. 1965; amd. Sec. 2, Ch. 226, L. 1969; amd. Sec. 2, Ch. 226, L. 1969; amd. Sec. 2, Ch. 375, L. 1971; amd. Sec. 57, Ch. 566, L. 1977; R.C.M. 1947, 84-4701.2(3); amd. Sec. 6, Ch. 421, L. 1985; amd. Sec. 12, Ch. 10, L. 1993; amd. Sec. 9, Ch. 458, L. 1997.

Compiler's Comments

1997 Amendment: Chapter 458 at end substituted "pursuant to Title 7, chapter 6, part 2, and all interest must be credited to the fund" for "in savings or time deposits in a state or national bank, savings and loan association, or credit union insured by the federal deposit insurance corporation or by the national credit union administration or invested in direct obligations of the

United States government and must be credited to the fund plus interest earned". Amendment effective April 30, 1997.

Applicability: Section 31, Ch. 458, L. 1997, provided: "[This act] applies to municipal budgeting procedures commencing on July 1, 1997."

Cross-References

Deposit and investment of public money, Title 7, ch. 6, part 2.
State unified investment program, Title 17, ch. 6, part 2.
Montana Health Facility Authority bonds -- legal investment, 90-7-113.

CAPITAL IMPROVEMENTS PLANS

COUNTY CAPITAL IMPROVEMENT PROGRAM FUND

(Note: This statute is only one funding option of many different options that counties have to pay for capital improvements.)

TITLE 7

CHAPTER 6

Part 22

General Provisions Related to Counties

7-6-2219. Authorization to establish capital improvement fund. The governing body of any county in Montana may establish a capital improvement fund for the replacement and acquisition of property, plant, or equipment costing in excess of $5,000 with a life expectancy of 5 years or more, provided a capital improvement program has been formally adopted by said governing body.

History: En. 16-1186 by Sec. 1, Ch. 54, L. 1975; R.C.M. 1947, 16-1186.

7-6-2220. Levy for capital improvement fund. Money for the capital improvement fund is to be derived from the multiple levies authorized by statute and appropriated to the capital improvement fund. However, no more than 10% of the money derived from any one levy may be appropriated to the capital improvement fund.

History: En. 16-1187 by Sec. 2, Ch. 54, L. 1975; R.C.M. 1947, 16-1187.

7-6-2221. Limitations on capital improvement fund. The capital improvement fund may not exceed at any time a competent engineering estimate of the cost of the adopted capital improvement program. Money deposited in the fund must be expended within a 10-year period.

History: En. 16-1188 by Sec. 3, Ch. 54, L. 1975; R.C.M. 1947, 16-1188; amd. Sec. 6, Ch. 252, L. 1979.

AQUATIC ECOSYSTEM PROTECTIONS

LAKESHORE REGULATIONS

Part 2
Lakeshores

Part Cross-References

Recreational use of lakes not addressed, 23-2-310.
Water conservancy districts -- level regulation, 85-9-102.
Recreational use -- rules, 87-1-303.
Frontages -- funds for recreational uses, 87-1-605.

75-7-201. Policy. The legislature finds and declares that the natural lakes of Montana are high in scenic and resource values and that the conservation and protection of these lakes is important to the continued value of lakeshore property as well as to the state's residents and visitors who use and enjoy the lakes. The legislature further declares that local governments should play the primary public roles in establishing policies to conserve and protect lakes. Local governments do not have adequate statutory powers to protect their lake areas, and it is the purpose of this part to confer such powers on local governments, provided that such powers are exercised to maintain public health, welfare, and safety.

History: En. 89-3701 by Sec. 1, Ch. 527, L. 1975; R.C.M. 1947, 89-3701.

Cross-References

Right to clean and healthful environment, Art. II, sec. 3, Mont. Const.
Duty to maintain clean and healthful environment, Art. IX, sec. 1, Mont. Const.

75-7-202. Definitions. As used in this part, the following definitions apply:

(1) "Lake" means a body of standing water and the area within its lakeshore occurring naturally rather than by virtue of constructed impoundments (although a natural lake whose level is raised and whose area is increased by the construction of impoundments includes the additional level and area), having a water surface area of at least 160 acres for at least 6 months in a year of average precipitation as such averages are determined by the United States geological survey, not used exclusively for agricultural purposes, and navigable by canoes and small boats.

(2) "Lakeshore" is the perimeter of a lake when the lake is at mean annual high-water elevation, including the land within 20 horizontal feet from that high-water elevation.

(3) "Local governing body" or "governing body" is that unit of local government authorized to administer the Montana Subdivision and Platting Act on the land adjoining a lake or part of a lake subject to this part.

(4) "Mean annual high-water elevation" is the mean average of the highest elevation of a lake in each of at least 5 consecutive years, excluding any high levels caused by erratic or unusual weather or hydrological conditions. A highest elevation caused by operation of a dam or other impoundment counts toward the establishment of the mean annual high-water elevation.

History: En. 89-3702 by Sec. 2, Ch. 527, L. 1975; R.C.M. 1947, 89-3702(part).

Cross-References

Montana Subdivision and Platting Act -- governing body, 76-3-103.

75-7-203. Change in definition of lake by local government. A local governing body may by resolution change the minimum size in the definition of a lake so that this part may apply to natural lakes in the county no smaller than 20 acres in water surface area.

History: En. 89-3702 by Sec. 2, Ch. 527, L. 1975; R.C.M. 1947, 89-3702(part).

75-7-204. Work for which permit required. (1) A person who proposes to do any work that will alter or diminish the course, current, or cross-sectional area of a lake or its lakeshore must first secure a permit for the work from the local governing body.

(2) Without limitation, the following activities, when conducted below mean annual high-water elevation, are examples of work for which a permit is required: construction of channels and ditches; dredging of lake bottom areas to remove muck, silt, or weeds; lagooning, meaning the placement of a narrow strip of land across a portion of a lake to create a lagoon; filling; constructing breakwaters of pilings; constructing wharves and docks.

History: En. 89-3703 by Sec. 3, Ch. 527, L. 1975; R.C.M. 1947, 89-3703; amd. Sec. 8, Ch. 68, L. 1979.

75-7-205. Unauthorized work. A person who performs work in a lake after May 1, 1975, without a permit for that work shall, if required by the local governing body or the district court, restore the lake to its condition before he disturbed it.

History: En. 89-3708 by Sec. 8, Ch. 527, L. 1975; R.C.M. 1947, 89-3708(1).

Cross-References

Nuisance, Title 27, ch. 30.

Criminal code -- public nuisance, 45-8-111.

75-7-206. Nature of property rights under part. Work or development authorized or approved under this part shall not create a vested property right in the permitted development other than in the physical structure, if any, so developed.

History: En. 89-3708 by Sec. 8, Ch. 527, L. 1975; R.C.M. 1947, 89-3708(2).

75-7-207. Regulations for issuance of permits. (1) Before January 1, 1976, every governing body having jurisdiction over an area containing a lake shall adopt regulations in the form of criteria for the issuance or denial of permits for work in lakes.

(2) Where a planning board has been created under 76-1-104 for an area containing a lake, the governing body shall seek the recommendations of the planning board as to the regulations to be adopted under this part.

(3) The local governing body may provide a summary procedure to permit work which it finds has a minimal or insignificant impact on a lakeshore.

(4) A governing body whose area contains more than one lake may adopt regulations in differing form for the various lakes, recognizing the physical and social differences between lakes.

(5) The requirements of 75-7-208 are minimum requirements and do not restrict a local governing body from adopting such stricter or additional regulations as may be authorized by other statutes.

History: En. 89-3704 by Sec. 4, Ch. 527, L. 1975; R.C.M. 1947, 89-3704(1), (3) thru (5).

Cross-References

Montana Subdivision and Platting Act -- local governing body, 76-3-103.

75-7-208. Factors favoring issuance of permit. The regulations shall favor issuance if the proposed work will not during either its construction or its utilization:

(1) materially diminish water quality;

(2) materially diminish habitat for fish or wildlife;

(3) interfere with navigation or other lawful recreation;

(4) create a public nuisance; or

(5) create a visual impact discordant with natural scenic values, as determined by the local governing body, where such values form the predominant landscape elements.

History: En. 89-3704 by Sec. 4, Ch. 527, L. 1975; R.C.M. 1947, 89-3704(2).

Cross-References

Water quality classifications and standards, Title 75, ch. 5, part 3.

75-7-209. Regulations for particular lake. Upon petition of five owners or 30% of the owners of land abutting a lake, whichever is smaller, the department of natural resources and conservation may adopt regulations under 75-7-207 and 75-7-208 for the particular lake. The department may then exercise the powers conferred upon a local governing body by this part until the governing body adopts the necessary regulations.

History: En. 89-3704 by Sec. 4, Ch. 527, L. 1975; R.C.M. 1947, 89-3704(6).

Cross-References

Montana Administrative Procedure Act -- adoption of rules, Title 2, ch. 4, part 3.

75-7-210. Application for permit – fee – limitations. (1) A person seeking a permit for work in a lake or on a lakeshore shall apply to the local governing body and shall pay a permit fee established by the governing body under subsection (2).

(2) (a) The local governing body shall establish a permit fee as provided in subsection (1). The permit fee must reasonably address the cost of administering the permit application. Factors the local governing body shall consider when establishing the fee include but are not limited to:

(i) the annual estimated total number of permit requests;

(ii) the complexity of the specific project;

(iii) the need for and location and number of onsite investigations; and

(iv) the estimated cost of the specific project.

(b) The fees established in this subsection may not exceed the following limits:

(i) $25 for residential permits not requiring a variance from the local governing authority;

(ii) $60 for residential permits requiring a variance from the local governing authority;

(iii) $60 for commercial permits not requiring a variance from the local governing authority; and

(iv) $150 for commercial permits requiring a variance from the local governing authority.

History: En. 89-3705 by Sec. 5, Ch. 527, L. 1975; R.C.M. 1947, 89-3705(part); amd. Sec. 1, Ch. 648, L. 1991.

75-7-211. Consultation with local planning board. (1) Where a planning board has been created under 76-1-104 for the area containing the lake in question, the governing body shall seek the recommendation of the planning board as to the compliance of the proposed work with the criteria for the issuance of a permit. The planning board shall report its recommendations to the governing body as to whether the proposed work conforms to the criteria for issuance of a permit and may require the applicant to submit additional information before the board reports its recommendations.

(2) In areas where a planning board is not established, the functions of a planning board under this section shall be exercised by the local governing body.

History: En. 89-3705 by Sec. 5, Ch. 527, L. 1975; R.C.M. 1947, 89-3705(part).

Cross-References

Montana Subdivision and Platting Act -- governing body, 76-3-103.

75-7-212. Issuance of permit. (1) Unless the applicant agrees to an extension of time, the governing body shall grant or deny permission for the work within 90 days of receiving an application for a permit.

(2) If the governing body finds that the proposed work conforms to the criteria for issuing a permit, it shall issue a permit or conditional permit.

(3) If the governing body finds that the work does not conform to the criteria, it shall deny the application.

History: En. 89-3706 by Sec. 6, Ch. 527, L. 1975; R.C.M. 1947, 89-3706.

75-7-213. Variance procedure. A governing body which proposes to grant a variance from its regulations under this part shall first prepare an environmental impact statement, at the expense of the applicant, which conforms to the requirements of regulations adopted pursuant to this part, distribute this statement to interested residents, and conduct a public hearing on the proposed action.

History: En. 89-3707 by Sec. 7, Ch. 527, L. 1975; R.C.M. 1947, 89-3707.

Cross-References

Environmental impact statements, 75-1-201.

75-7-214. Cooperation between governing bodies. If a lake, as defined by this part, is located under the jurisdiction of more than one governing body, the governing bodies are empowered and encouraged to enter into agreements to effectuate the purposes of this part and establish compatible criteria for denial or issuance of permits.

History: En. 89-3709 by Sec. 9, Ch. 527, L. 1975; R.C.M. 1947, 89-3709.

75-7-215. Judicial enforcement and review. The district court may hear and decide the following cases arising under this part within the district:

(1) a complaint and petition of a governing body or an interested person for an order to restore a lake to its previous condition or to enjoin further work in a lake;

(2) a petition of an interested person for review of a final action of a governing body upon an application for a permit;

(3) a petition of an interested person for review of an action of a governing body in adopting or amending regulations.

History: En. 89-3710 by Sec. 10, Ch. 527, L. 1975; R.C.M. 1947, 89-3710.

Cross-References

Montana Administrative Procedure Act -- judicial review, Title 2, ch. 4, part 7.
District Courts, Title 3, ch. 5.
Venue for actions arising from lake dispute, 25-2-124.
Injunctions, Title 27, ch. 19.
Mandamus, Title 27, ch. 26.

75-7-216. Penalty. (1) A person who violates an order issued under this part or who knowingly violates a regulation made under this part commits a misdemeanor and on conviction may be sentenced to 30 days in the county jail or fined $500, or both.

(2) Fines collected under this section, except those collected in a justice's court, shall be paid to the general fund of the county where the offense was committed for the purpose of administering this part.

History: En. 89-3711 by Sec. 11, Ch. 527, L. 1975; R.C.M. 1947, 89-3711; amd. Sec. 44, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.
Execution of criminal fine, 46-19-102.

75-7-217. Funding. In compliance with 1-2-112, the administration of this part is declared a public purpose of a city or county which may be paid out of permit application fees collected under 75-7-210 and federal revenue sharing moneys.

History: En. 89-3712 by Sec. 12, Ch. 527, L. 1975; R.C.M. 1947, 89-3712.

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